

1 XAVIER BECERRA
Attorney General of California
2 PEGGY S. RUFFRA
Supervising Deputy Attorney General
3 JILL M. THAYER
Deputy Attorney General
4 State Bar No. 166428
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
Telephone: (415) 703-5954
6 Fax: (415) 703-1234
E-mail: Jill.Thayer@doj.ca.gov
7 *Attorneys for Respondent*

8
9 IN THE UNITED STATES DISTRICT COURT
10 FOR THE NORTHERN DISTRICT OF CALIFORNIA
11 SAN FRANCISCO DIVISION

12
13 **CRAIG RICHARD CHANDLER,**

17-cv-00325-EMC

14 Petitioner,

EXHIBITS

15 v.

16 **SCOTT FRAUENHEIM, Warden,**

17 Respondent.
18

19
20 Exhibit 3 State Court Reporter's Transcript (Vols. 14-20)
21
22
23
24
25
26
27
28

EXHIBIT 3

(Vol. 14)

TO THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

---o0o---

THE PEOPLE OF THE STATE OF)
CALIFORNIA,)

Plaintiff - Respondent,)

v.)

No. C1223754

CRAIG RICHARD CHANDLER,)

Defendant - Appellant.)

COPY

VOLUME 14

PAGES 1302 - 1433

JULY 24, 2013

---o0o---

REPORTER'S TRANSCRIPT ON APPEAL
FROM THE JUDGMENT OF THE SUPERIOR COURT
OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SANTA CLARA
BEFORE THE HONORABLE ARTHUR BOCANEGRA, JUDGE, AND JURY

---o0o---

APPEARANCES:

FOR PLAINTIFF-RESPONDENT: OFFICE OF THE ATTORNEY GENERAL
BY: KAMALA D. HARRIS,
Attorney General of the State
of California

FOR DEFENDANT-APPELLANT: In Propria Persona

— — — o o — — —

DEFENDANT.

CASE NO. C1223754

— — — 00 — — —

JULY 24, 2013

---o0o---

JAMIE L. MIXCO
C.S.R. No. 12708

INDEX**EXAMINATION**

<u>Witness Name</u>	<u>Page</u>
DIEGO DOE	
Direct By Mr. Madden	1327
Cross By Ms. Filo	1333
CHRIS DOE	
Direct By Mr. Madden	1334
Cross By Ms. Filo	1342
MARY DOE	
Direct By Mr. Madden	1347
Cross By Ms. Filo	1355
JORGE DOE	
Direct By Mr. Madden	1357
Cross By Ms. Filo	1367
CARL DOE	
Direct By Mr. Madden	1369
Cross By Ms. Filo	1376
MARCUS DOE	
Direct By Mr. Madden	1379
Cross By Ms. Filo	1388
ANNIE DOE	
Direct By Mr. Madden	1391
Cross By Ms. Filo	1409
Re-Direct By Mr. Madden	1424

DEFENSE EXHIBITS

<u>Exhibits</u>	<u>Description</u>	<u>Page</u>
C-1	Marked document	1322

1 San Jose, California

July 24, 2013

2 PROCEEDINGS

3 THE COURT: We'll go on the record. Record will
4 reflect both counsel are present, Mr. Chandler is present in
5 the courtroom, jury is not here.

6 We have an issue related to, I believe it's Defense
7 C, concerning Ms. Lyn Vijayendran's typewritten account of
8 her interview with Becky, and I just wanted to make some
9 tentative comments on the record and then I'll allow counsel
10 an opportunity to respond.

11 We did discuss this briefly. I believe it was
12 yesterday informally. Mr. Madden referred me to *People v.*
13 *Cowan* at 50 Cal. App.4th 401. I have reviewed that case, and
14 as both parties know, that was a different fact-situation
15 that we have here. Just briefly, in *Cowan* the witness made a
16 statement to the police officer related to a homicide that
17 occurred in September right after Labor Day, and he made the
18 statements to the officer approximately three months after
19 the events he was talking about. And in that particular
20 case, he testified that what -- when he told the officer
21 three months, that the events were fresh in his mind.

22 So we discussed this earlier about past
23 recollection recorded and that Ms. Vijayendran had written
24 this typewritten report three months after talking with
25 Becky. So *Cowan* really doesn't apply, because 1237 focuses
26 on the witness's statement, which in this case, it's Becky.
27 Becky makes a statement in October and we're dealing with a
28 principal recording statements three months later.

1 So was it fresh in her mind at the time? I think
2 that has some relevance, but it appears to me, and I'm making
3 reference to *People v. Hess* at 10 Cal.App.3rd 1071, which
4 basically made reference to saying that a third person may
5 record what the witnesses said, and he has kind of changed
6 it, because at that time it basically said the witness
7 doesn't necessarily have to have seen the recording and
8 personally looked at it. But *Hess* did say: But the accuracy
9 and the contents is verified by the testimony of the
10 recorder, that he/she recorded accurately what the
11 witness/declarant said.

12 So I think that is the issue before us, although I
13 do have some reservations about past recollection recorded
14 here. As I recall, number one, Becky did testify. It seemed
15 like she had some sufficient recollection about her interview
16 with the principal. That's one issue.

17 The other issue that concerns me, that when I look
18 at Defense C, it appears to me this is basically a statement
19 about the principal's investigation. There is a lot in here
20 what Becky's mom tells the principal, then what the principal
21 does to investigate the incident. For example, on page one
22 of Defense C, the only portion that talks about Becky giving
23 a statement to the principal is the fourth paragraph, and
24 then on page two, the first half of that page, and then the
25 second to the last paragraph starts talking about Ms. Lyn
26 Vijayendran's investigation. So those are problematic to the
27 Court.

28 However, what concerns me is that when the

1 principal was testifying, she was asked a number of
2 questions: Is your statement based on a number of
3 recollections? Yes. And she was sort of like, I thought, a
4 little evasive about whether it was detail and accurate. At
5 one time she was asked: And at that time, did you believe
6 you had a full and complete recollection of your
7 conversations with Becky in October? And her response is: I
8 wouldn't say that I even then believed that I had the entire
9 conversation documented in this report because there were
10 things that I wasn't -- that weren't as clear in my mind as
11 time has passed, but I did my best to create a report that
12 was based on my recollection, had details in it that I
13 remember. So I have reservations, based on the principal's
14 testimony, the accuracy of the statements.

15 So that is -- those are my preliminary comments
16 right now. I have reservations allowing it under 1237. I'm
17 not comfortable that 1237 applies. I will hear comments from
18 both sides.

19 MR. MADDEN: Thank you, Your Honor.

20 THE COURT: Sure.

21 MR. MADDEN: Let me first address a concern the
22 Court expressed about Exhibit C, which contained the total of
23 her typewritten notes. This morning, I redacted that
24 document and copied it. I gave a copy to the People and I
25 will be happy to give a copy to the Court at this point, if I
26 may approach. If I may be clear, the redacted portion is the
27 same report. There is an initial paragraph that details her
28 conversation with Becky, sort of her preliminary conversation

1 with Becky in her office and Becky's mother. Then Becky's
2 mother and Becky stepped out of the office and they returned,
3 and the second part of this is the second paragraph.

4 THE COURT: Okay.

5 MR. MADDEN: So this is really a more -- it's a
6 properly redacted typewritten statement. That is, I've
7 only -- I would ultimately ask that be substituted for --
8 however the Court wants to do it. Either substitute it for C
9 or add it as C-1. We could address that as this matter
10 unfolds.

11 I also -- I don't have a transcript of what was
12 said by Ms. Vijayendran, but I want to point out to the Court
13 that this is critical to the defense. I mean, there is a --
14 the thrust of this, the main point is that her typewritten
15 notes are inconsistent -- somewhat inconsistent with her
16 testimony, because as the Court properly noted, I don't think
17 she was being evasive. I don't think she really remembered,
18 but I'll take the Court's description in face value. It
19 doesn't really matter, but whether she's being evasive or
20 whether she doesn't remember, it's a prior inconsistent
21 statement.

22 THE COURT: Let me ask you a question. Prior
23 inconsistent statement with?

24 MR. MADDEN: Her testimony.

25 THE COURT: With -- well, hold on. With her
26 written notes, which is People's 3?

27 MR. MADDEN: With her -- what note?

28 THE COURT: Her written notes.

1 MR. MADDEN: Yes, it's inconsistent with her
2 written notes. Yes, those have been admitted as an exhibit.

3 THE COURT: See, that even gives me more pause to
4 the reliability and accuracy of this, because these written
5 notes were written contemporaneously with the interview,
6 which would seem they would be very accurate.

7 MR. MADDEN: Let's put things in perspective.

8 THE COURT: Okay.

9 MR. MADDEN: The handwritten notes are very -- are
10 comparatively speaking, brief. And her testimony was that --
11 I believe that her testimony, as I recall it, was that she
12 recalled the handwritten notes maybe included a third of the
13 conversation. A third comes to mind. And that four weeks
14 later she did these typed notes, which obviously -- I mean,
15 the original typed notes were and are four single-space
16 pages.

17 MS. FILO: I'm sorry, Your Honor. I just have to
18 correct the record at least. It wasn't four weeks; it's
19 three months afterwards.

20 MR. MADDEN: I thought I said four pages.

21 MS. FILO: You said it happened four weeks later
22 and it's three months later and --

23 MR. MADDEN: Absolutely correct. You're right.

24 MS. FILO: Then you're referencing a four-page
25 typed document, but there is only one page of that typed
26 document that actually reflects her conversation with Becky.
27 The other three pages are what she did subsequent to that,
28 which included a bunch of stuff that has nothing to do with

1 her conversation with Becky. I just want the record --

2 MR. MADDEN: It included a large part of -- the
3 four pages included her conversation with Mr. Chandler, which
4 of course we're not allowed to get into. That's why it had
5 to be redacted. It also included back and forth
6 communication she was having with the school district, which
7 is not relevant to this case and is not a part of that.

8 I'm not trying to get anything by her. If I said
9 four weeks, I misspoke. I didn't intend to do that.
10 Clearly, it speaks for itself. The handwritten notes were
11 written in mid-October and the typewritten notes were written
12 in mid-January, so it is three months later. No question
13 about it.

14 Cowan is still valid law for the principal, and the
15 delay of three months is not too long. That was the People's
16 initial objection, and at the time the People made that
17 objection, the only objection is past recollection recorded,
18 was that it was too long. Cowan, even though it was
19 different, the principal of the delay from the event to
20 writing down this statement is still relevant in this case.
21 Relevant and good law. Okay.

22 But my difficulty is this, and I think I have to
23 spell it out by -- sorry. I don't think I have it with me
24 here. You have to bear with me, Your Honor. I have to dig
25 it out. I will -- it's very important. Here I go.

26 I'm just reading here from my notes of trial
27 testimony.

28 THE COURT: Okay.

1 MR. MADDEN: And we may have to get a re-read of
2 that to have complete accuracy concerning what she said. But
3 my notes reflect that on cross Ms. Filo stated that her typed
4 notes were written 10 to 12 weeks after the interview with
5 Becky. She stated there are -- I'm quoting here -- possibly
6 things in there she doesn't remember. She thinks she has a
7 good memory, and that's all she said.

8 And I think this dovetails with the Court's comment
9 about her not remembering, or in the past being evasive. I
10 mean, she said she has a good memory. I think she was
11 referring to, one, her ability to write the four-page
12 document three months later. And I think she was also
13 referring to her ability on the stand to recall the events
14 that were surrounding Becky's statement to her. Of course
15 she had both her handwritten notes and typewritten notes
16 there, but what I'm saying is that the comment in the -- if
17 we take a look at -- I want to refer the Court to the
18 typewritten notes, the redacted version that I provided the
19 Court this morning, I want to read from that.

20 By the way, the child's name -- mother's name are
21 not in here. It was redacted. The Court knows what I'm
22 talking about.

23 THE COURT: Right.

24 MR. MADDEN: So it doesn't say this, but for
25 purposes of understanding my point, I have Becky and her
26 mother come back into my office, and I had Becky start over
27 again and explain what happened. Her account was as follows:

28 After about ten minutes of playing out at recess,

1 recess is 20 minutes long, Becky was called back to the
2 classroom. Becky saw Mr. Chandler go into the closet and
3 take out a blue blindfold. He then went to a basket near the
4 door and got a blanket. The blanket was white. Becky put
5 the blindfold on after Mr. Chandler asked her to. Mr.
6 Chandler told Becky to lie down on the floor right here.
7 That's in quotes. She did.

8 He took the blanket and put it over her head. Mr.
9 Chandler asked Becky to take off her shoes. She was wearing
10 silver flats. Becky felt something gooey on her feet and on
11 her leg. She felt Mr. Chandler moving near her and he asked
12 her to move her legs. Becky initially said Mr. Chandler told
13 her to move her legs, but then she said to open her legs. I
14 asked her which it was, and she said she couldn't remember.
15 I asked if she felt anything between her legs, and she said
16 no.

17 Mr. Chandler was next to her. Mr. Chandler lifted
18 the blanket up to about her nose and then put something in
19 her mouth and made her drink something. She explained the
20 drink as salty and that the bottle was gooey. I asked her if
21 she felt the same as what was on her foot, and she said no.
22 It felt different, but also gooey. Becky said some of the
23 drink fell out of her mouth because she was lying down and it
24 got onto her jacket. Mr. Chandler removed the blanket and
25 blindfold, and Becky went to the sink to wash off her hands
26 and Mr. Chandler gave her a damp paper towel to help. He
27 opened up a Wonka chocolate and put it in her mouth. The
28 bell rang and Mr. Chandler went to the door to open it.

1 I asked Becky to try to remember what, if anything,
2 Mr. Chandler has said during the incident, but she said she
3 couldn't really remember. When I asked her how she felt
4 about what had happened, she said she just think it's weird
5 and that she didn't like him putting things in her mouth.
6 Her demeanor was calm and matter of fact. She said she was
7 not angry or scared.

8 All right. So again, this statement, this written
9 statement by Ms. Vijayendran, is different from her
10 handwritten notes, which is an exhibit of the People, and has
11 been exhibited at the beginning and through this trial by the
12 People. And it is categorically unfair to use -- to allow
13 the handwritten notes to come in without having the jury see
14 as an exhibit the redacted typewritten notes, because that is
15 inconsistent with two things:

16 It's inconsistent with her memory. She doesn't
17 seem to remember about the bottle, and I'm not quoting the
18 testimony. I'm just quoting from my notes and recollection,
19 so it may not be accurate. I think -- I see the nodding of
20 the head, I think the Court has the same sense, that it's
21 inconsistent with her testimony and it's also inconsistent
22 with the handwritten notes. It's an inconsistent statement
23 and it does qualify under past recollection recorded.

24 And the jury -- if the Court does not allow this, a
25 terrible injustice will occur because the jury will be
26 allowed to consider an incomplete -- an admittedly incomplete
27 handwritten statement. The more complete written statement
28 is expanded and explains it, and I think that was also her

1 testimony, that she wanted to expand on that. And although I
2 don't remember her being asked about this, I honestly don't.
3 Maybe the Court could help me. I have to believe that she
4 must have had her handwritten notes and referring to those
5 when she made the handwritten statement and she remembered
6 more, as she indicated here, but she also indicated that she
7 thinks she has a good memory, but she's not quite sure.

8 So for all of those reasons, it's a prior
9 inconsistent statement and it qualifies under past
10 recollection recorded, under all legs of that requirement.
11 And as to the time, I think the point of law in *Cowan* on the
12 delay from the event to writing of the report is very good
13 law and is on this point.

14 THE COURT: Well, basically, *Cowan* is relevant as
15 far as the Court saying three months --

16 MR. MADDEN: Yes.

17 THE COURT: -- isn't a period of time where it's
18 fresh in the person's mind. That was the point they were
19 making there, that three months by itself is too long a
20 period.

21 Let me just make a few comments. You talk about
22 her memory, and she said: I wrote this written statement
23 based on my memory. Okay. And even then she -- as I made
24 the comment, she was concerned about whether she remembered
25 everything, but it was just based on her memory. And then
26 for her to testify that she didn't know if she had the
27 handwritten notes while she wrote this written report, I
28 mean, to me, Mr. Madden, that is I think a very important

1 fact. The fact that she had them or didn't have them, number
2 one.

3 Number two, when I read her total written report,
4 it almost seems like she's bias and trying to justify her
5 conduct. And there was no testimony really about how this
6 written statement incorporated everything she got from Mr.
7 Chandler, his explanations of what was going on.

8 In any event, I have some reservations, even if
9 we're looking at this as a 1237 report on the accuracy, and
10 as I think about it, even the reliability because of Ms.
11 Vijayendran's bias. I mean, she was basically preparing a
12 report it sounds, to me, to justify her conduct because of
13 her actions because that's the sense I get. But I will allow
14 Ms. Filo to respond.

15 MS. FILO: Thank you. So, first of all, I want to
16 say sort of two things.

17 THE COURT: One more thing. I apologize.

18 MS. FILO: No.

19 THE COURT: When we talk about inconsistencies,
20 it's -- really, we're talking about the principal
21 inconsistent with herself and not really the inconsistency of
22 Becky. So that was just a point that Mr. Madden had
23 mentioned.

24 MR. MADDEN: But before you go, Ms. Filo, just --
25 Your Honor, it clearly refers to the inconsistency of Becky.

26 THE COURT: Right. She said she didn't remember,
27 or there was no mention of a bottle during her testimony,
28 correct. But we're talking about --

1 MR. MADDEN: She doesn't recall the mentioning of a
2 bottle. She didn't say there wasn't a bottle. How could she
3 say that? Because in the handwritten statement, there was a
4 bottle -- excuse me -- in the type -- in her report there was
5 a bottle.

6 THE COURT: Wait. The principal said that --

7 MR. MADDEN: Yes.

8 THE COURT: -- not Becky. Becky never said there
9 was a bottle.

10 MR. MADDEN: I understand. Becky didn't say it was
11 a bottle, and that statement itself is inconsistent with
12 Becky's statement and comes in as a prior inconsistent
13 statement concerning Becky because the principal obviously
14 got that information from Becky.

15 THE COURT: Okay. Ms. Filo.

16 MS. FILO: Your Honor, I mean, I can't agree with
17 the Court any more. First and foremost, past recollection
18 recorded is to be used in the following circumstances:

19 The witness has no memory of the event, and in
20 order to -- and there is nothing that has been or could be
21 used to refresh that witness's recollection. And at that
22 point, a document created at or near the time of the event
23 can be substituted. I mean, it is in fact their memory.
24 We've had people -- we've had Ms. Vijayendran testify, and
25 she talked about all of those things. In fact, her memory
26 was refreshed on almost all of these topics.

27 My concern is exactly what the Court has described.
28 I mean, putting aside the quadruple levels of hearsay, we're

1 now into 1360 statement. Becky is not the declarant of the
2 document itself, and it is an inconsistent statement of a
3 hearsay statement, not being offered by the declarant, which,
4 I mean, I think that's enough to be problematic. I think the
5 Court is exactly right, that this document was created at the
6 request of the Human Resources Department after they process
7 in their heads that this is going to be a huge problem.

8 Ms. Vijayendran herself not only faced criminal
9 liability, but was convicted for her failure to act. The
10 school district is being sued by at least three of these
11 victims. I don't know -- at least three of them. It is
12 unconceivable to me that everybody and their mother isn't
13 trying to run for cover in the creation of a document that
14 tries to talk about what they did three months earlier.

15 So, I mean, it's -- this is a document that was
16 created in anticipation of litigation, and there is just
17 no -- there is no other reason for the document to be
18 created. The document is created at the request of the Human
19 Resources Department: Please justify what you did because
20 we're going to get sued. You're going to get prosecuted.
21 That's why the document is created. In and of itself it
22 lacks reliability, so --

23 MR. MADDEN: Your Honor, that is speculation of the
24 most -- of the tallest order. There is no evidence of that.

25 THE COURT: Of what?

26 MR. MADDEN: Of what Ms. Filo just said in terms of
27 anticipation of investigation. There is no evidence of that
28 here.

1 MS. FILO: I mean, would you have to believe that
2 the school district is -- I mean, of course they know that
3 they are going to get sued. I mean, she --

4 MR. MADDEN: Well --

5 MS. FILO: I mean, these are large public entities
6 that constantly deal with liability. I mean, her entire --
7 the entire document is: I made this phone call. I then went
8 and did this. I did that. I mean, there is no reason for
9 any of that other than to justify her failure to report.

10 THE COURT: Yes.

11 MR. MADDEN: With respect to -- we're getting lost
12 here in the -- within the forest. It's like -- what I'm
13 concerned about here is the water bottle statement. Does the
14 Court for a moment think that she's making that up to protect
15 herself?

16 THE COURT: No. I'm not saying she's making it up.
17 Okay. What I'm concerned with is that we have the quotes in
18 the People's exhibit about this. I mean, she talks about,
19 quote -- on the second page -- I believe third page, quote,
20 First he put the gooey something in my mouth, then he wiggled
21 my body back and forth and my head. Becky felt some salty
22 water in her mouth and then it dripped out into her hand and
23 her jacket. She wiped her hands on her jeans. Mr. Chandler
24 removed the blindfold and blanket. Becky did not see where
25 he put them.

26 My concern with the written statement, when we talk
27 about the bottle and based on her trial testimony is, did
28 this information come from Becky or is it a combination of

1 Becky and Mr. Chandler and her investigation? It's unclear
2 to me, which raises my concern about the accuracy, as well
3 as -- the reality is that when she wrote this written
4 statement three months after she interviewed Becky, there was
5 a lot of attention being given to this incident at the
6 school. I mean, we can't ignore that fact. I mean, that was
7 part of I believe the reasons why she was directed to give an
8 accounting of her conduct. This is her conduct and her
9 explanations of what she did and why she did it.

10 MR. MADDEN: That doesn't take away from the fact
11 that she's talking about an -- in this part of her report
12 only what Becky told her.

13 THE COURT: Okay.

14 MR. MADDEN: This exhibit as redacted has nothing
15 to do with those things. It has to do with the recitation of
16 the facts, the bottle itself, and I asked her on cross -- it
17 was on page 208 of the preliminary examination, she
18 testified --

19 MS. FILO: She didn't testify at the preliminary
20 hearing.

21 MR. MADDEN: I'm sorry.

22 MS. FILO: She didn't testify at the preliminary
23 examination.

24 MR. MADDEN: I apologize, at her trial. She
25 testified on page 208 of her trial testimony, starting at
26 line 5:

27 Answer: I think, if I remember correctly, it was
28 to describe the item delivered. She described the bottle as

1 gooey.

2 All right. And so we have her testimony under oath
3 at trial. We have her testimony, her report -- there is no
4 reason to be suspicious of the entry of the word "bottle."
5 That would not -- when that was -- I might add, this was not
6 part of the trial -- of her trial. All right. There is
7 absolutely no reason to be suspicious of her use of the word
8 "bottle." What advantage would she have had by that? I
9 mean, it would not have changed anything. All right.

10 So I'm concerned -- I'm concerned about the Court's
11 categorizing her testimony as evasive. Like everybody else
12 in this case, being straightforward, over a period of time
13 your memory is not that accurate. She says: I have a good
14 memory, but there may be things in that report that I don't
15 remember, and that has to do with the bottle.

16 THE COURT: When I said evasive, I meant that even
17 when she testified here, she said -- when asked about is this
18 complete and accurate, she would continually say: Well, it
19 was to the best of my memory at the time. She kept referring
20 to when she wrote it.

21 MR. MADDEN: Correct.

22 THE COURT: But as I already said before, what
23 troubled me was her testimony when she says, and I quoted
24 this before: I wouldn't say that I even then believe that I
25 had the entire conversation documented in this report because
26 these were things that I wasn't -- that weren't as clear in
27 my mind as time had passed, but I did my best to create a
28 report that was based on my recollection and details in it

1 that I remembered.

2 So she was saying at the time she wrote the report
3 even then she didn't know because time had passed. She tried
4 her best.

5 MR. MADDEN: Well, nobody could possibly write a
6 report anytime -- no report could possibly detail a hundred
7 percent of a conversation. I don't care how recent or close
8 to the conversation it was. You could make that statement
9 about all written statements.

10 THE COURT: Well, when she's -- well, I have to say
11 that the statement that she wrote out as she's interviewing
12 Becky contemporaneously is more accurate and specific as to
13 her records because she's putting quotes.

14 MR. MADDEN: Not as to the bottle.

15 THE COURT: Okay.

16 MS. FILO: Maybe Becky didn't ever say bottle. I
17 guess that's the problem. She doesn't write it down in the
18 context of that conversation. She doesn't write it down at
19 the time that she's making the notes contemporaneous with the
20 discussion.

21 MR. MADDEN: Well, obviously these are notes. They
22 are in quotes. She's writing down quotes. She's not writing
23 down all the quotes, just the ones as they unfolded were
24 memorable to her. Later, she obviously thought about this,
25 and it's reasonable to assume she would have looked at that
26 as a reference point to refresh her recollection.

27 THE COURT: The written notes?

28 MR. MADDEN: Yeah, the handwritten notes.

1 THE COURT: We can't make that assumption.

2 MR. MADDEN: What I would like to do is, I think we
3 need a more clearer record, I think we need Ms. Vijayendran
4 to return to court.

5 MS. FILO: Your Honor, my -- I would just say we
6 did ask her very specifically. Ms. Vijayendran was on
7 maternity leave at the time she created the typed notes. She
8 did testify that she wrote the typed notes from home. Det.
9 Pierce is here. He personally obtained handwritten notes
10 from her office. She was still on maternity leave and not --
11 the typed notes were created at home. So she -- I believe
12 she testified that she didn't think she had those notes, but
13 I mean, they were at the school. They were recovered from
14 the school. She created the typed notes at home while on
15 maternity leave.

16 MR. MADDEN: Whether or not she had them in her
17 typewritten notes, she specifically stated that there was a
18 bottle that put gooey liquid into her mouth and it was the
19 bottle that was gooey. That is very, very specific and
20 obviously critical to the defense. It's the defense's [sic]
21 position what was put in her mouth was a male erect penis.

22 MS. FILO: I assume that's the prosecution's
23 position, not the defense's.

24 THE COURT: The redacted copy that Mr. Madden gave
25 me, I'm going to mark that as C-1 so we have it as part of
26 the record. It's C-1.

27 (Whereupon, Defense Exhibit C-1 was marked for
28 identification.)

1 MR. MADDEN: Your Honor, if I could make one
2 additional legal point?

3 THE COURT: Sure. Yes.

4 MR. MADDEN: One moment, please. I also would like
5 to submit to the Court that this also comes under 771 of the
6 Evidence Code, production of writing to refresh your memory.
7 And the Court -- you did mention the *Hess* case; correct, Your
8 Honor?

9 THE COURT: Um-hum.

10 MR. MADDEN: All right. A leading case on 771 is
11 *People v. Hess*, 1970, 10 Cal.App.3d 1071. There, a witness
12 while testifying was allowed to refresh her memory with a
13 written memorandum she prepared a few days before trial, but
14 more than a year after some of the events referred to in the
15 memorandum.

16 The defendant contended that it was error to permit
17 the use of the notes because Section 1237 requires that the
18 writing be made at the time when the fact recorded in the
19 writing actually occurred or was fresh in the witness's
20 memory. Court of Appeal rejected the contention because the
21 requirements of 1237 does not apply to refresh a witness's
22 memory.

23 So it's admissible, in my opinion, under all of
24 those theories for the reasons that I stated and for the case
25 law that I cited, and I can't be more emphatic about how
26 unfair it is to have handwritten notes talking about
27 something in my mouth and at the same time rejecting a typed
28 report clarifying what that something was, and that something

1 was a bottle. And that's essentially what I want it for and
2 obviously it's critical to this case.

3 THE COURT: Any final comments, Ms. Filo?

4 MS. FILO: Submitted, Your Honor.

5 THE COURT: Based on everything the Court has heard
6 at this particular hearing, Ms. Vijayendran's testimony and
7 prior comments about this issue before --

8 MR. MADDEN: It's Defense C-1.

9 THE COURT: Yes. Defense C-1, the defense's
10 request to have that read into the record or introduced into
11 evidence as an exhibit is denied for the reasons I've
12 indicated. A number of reasons the Court raised about the
13 accuracy and the reliability, and obviously this is over Mr.
14 Madden's objection.

15 MR. MADDEN: Would the Court allow the defense to
16 recall Ms. Vijayendran to clarify these issues?

17 THE COURT: When you mentioned that earlier, I
18 thought about that, and I think that we have exhausted this
19 issue. That request is denied as well.

20 MR. MADDEN: Well, I don't think we exhausted the
21 actual basis for these notes. I don't think we did it at the
22 hearing. Counsel for the People has speculated as to a lot
23 of things that could be clarified by -- in a 402 hearing. I
24 would ask an opportunity to bring Ms. Vijayendran in to
25 clarify the factual issues concerning this report, and I
26 think that it may indeed change the Court's mind.

27 MS. FILO: Your Honor, may I be heard on that
28 issue?

1 THE COURT: Um-hum.

2 MS. FILO: My concern with doing that is, I can't
3 imagine that a witness is ever going to acknowledge that a
4 document was created for the specific purposes of kind of
5 covering themselves in the event of future litigation. I'm
6 fully -- yes, I believe that Ms. Vijayendran herself had and
7 ultimately did suffer criminal consequences as a result of
8 her inaction. But this is a much bigger issue. I mean, this
9 involves now the Human Resources Department. Do they know
10 they are going to get sued? Are they trying to get her to
11 recreate events? I mean, it's just -- this is a 352 issue
12 that -- I mean, it could be -- it could take days to resolve.

13 I just don't -- I mean, she has now -- I mean,
14 she's been prosecuted. She testified at her own trial. She
15 has testified here. I mean, these issues have been explored
16 at nauseam.

17 THE COURT: Okay. Actually, what I was doing is I
18 was just reflecting on her testimony and going through it in
19 my own head and I have given her testimony a lot of thought
20 and consideration. And based on what I've heard to this
21 point, the request for a 402 hearing will be denied. I don't
22 do this lightly. I know this is important to the defense,
23 but I think that that is the correct ruling.

24 We'll be in recess for just a restroom break, in
25 case anyone wants to use the restroom, then we'll call the
26 jury up.

27 (Whereupon, a brief recess was taken.)

28 THE COURT: Thank you. The record will reflect all

1 members of the jury are present, both counsel are present,
2 Mr. Chandler is present.

3 Mr. Madden, your next witness.

4 MR. MADDEN: Yes. My next witness is Diego, Your
5 Honor. Thank you. And I would like the record to reflect to
6 his mother is present in the first row behind my counsel
7 table, along with a Spanish interpreter to aid in the
8 interpretation.

9 THE COURT: Okay. Thank you very much.

10 DIEGO DOE,

11 Being called as a witness on behalf of the
12 Defendant, having been first duly sworn, was examined and
13 testified as follows:

14 MR. MADDEN: Diego, please do me a favor, scoot the
15 chair in as far as you can, and then try, if you can, to sit
16 up straight. Could you do that? I know it's probably -- the
17 chair is a little too big for you. All right? Are you okay
18 there? Now I'm going to move this microphone over. I'm
19 going to put it down so it's at the level of your mouth.
20 Okay? I'm going to leave it here because I think that's --
21 we'll be able to hear you the best if you speak into this
22 microphone. All right?

23 THE WITNESS: (Shakes head up and down.)

24 MR. MADDEN: Now?

25 THE WITNESS: Yes.

26 MR. MADDEN: Thank you. So I'm going to come back
27 here and ask you some questions. I know you're a little
28 nervous; right? That's why you're pulling on your shirt.

1 It's okay to be nervous. All right? It's not a problem.

2 All right. So --

3 THE COURT: Hold on, Mr. Madden.

4 Would you state your name?

5 THE WITNESS: Diego.

6 THE COURT: And would you spell your first name?

7 THE WITNESS: D-i-e-g-o.

8 THE COURT: Very good.

9 Direct, Mr. Madden.

10 MR. MADDEN: Thank you, Your Honor.

11 DIRECT EXAMINATION

12 BY MR. MADDEN:

13 Q. So, Diego, I'm going to go over some of the rules.

14 Okay?

15 A. (Shakes head up and down.)

16 Q. The first rule is, I want you always -- if you mean yes
17 to use the word yes?

18 A. Okay.

19 Q. In other words, if I ask you a question and the answer
20 is yes, I don't want you to answer by shaking your head up
21 and down.

22 A. Okay.

23 Q. All right. The reason that I want you to do that is the
24 lady in front of you is a court reporter and she has to write
25 down all of the words that I'm saying and that you are
26 saying, and it doesn't work if you are shaking your head for
27 yes or shaking your head for no. You have to either say yes
28 or no. Okay?

1 A. Okay.

2 Q. So sometimes in a courtroom, especially when we've never
3 been there before, we forget the rules. So if you start to
4 shake your head or anything, I'll probably say something
5 like: Do you mean yes or do you mean no. Okay?

6 A. (Shakes head up and down.)

7 Q. So don't worry about it. You just do your best to use
8 words. Okay?

9 A. Okay.

10 Q. All right. Also, if I ask you a question and you don't
11 understand my question, tell me you don't understand it and
12 I'll use other words to make sure that you do understand the
13 question. Okay?

14 A. Okay.

15 Q. All right.

16 Diego, where do you go to school?

17 A. O.B. Whaley School.

18 Q. Did you just finish -- what grade did you just finish?

19 A. Third.

20 Q. So you are going into the fourth grade?

21 A. Yes.

22 Q. All right. And was Mr. Chandler your teacher for the
23 second grade?

24 A. Yes.

25 Q. Do you remember what classroom number you were in when
26 you were in Mr. Chandler's class?

27 A. Yes.

28 Q. What number was that?

1 A. 18.

2 Q. Good. Was that a combination class of second-graders
3 and third-graders?

4 A. Yes.

5 Q. All right. So that would mean that you sat on the side
6 of the class where the computers and where the sink was;
7 right?

8 A. No.

9 Q. Did you --

10 A. I mean, yes.

11 Q. Yes. All of the second-graders sat on that side of the
12 class; right?

13 A. Yes.

14 Q. The third-graders sat on the other side?

15 A. Yes.

16 Q. Okay. Now, during that year, did you remember playing a
17 game where you were blindfolded and tried to guess an object?

18 A. Yes.

19 Q. Okay. And did you see your friends playing this game in
20 class?

21 A. Yes.

22 Q. Did you play it in class?

23 A. Yes.

24 Q. Did both boys and girls play the game?

25 A. Yes.

26 Q. Did everybody play the game?

27 A. Yes.

28 Q. All right. Do you remember how many times you played

1 the game?

2 A. Two times.

3 Q. Okay. You saw the other students play it also; right?

4 A. Yes.

5 Q. Okay. Do you know if other classes played the game?

6 A. No.

7 Q. Do you remember any other classes playing the game?

8 A. No.

9 Q. Do you remember telling a police officer that
10 Ms. D'Arcy's class plays the game too?

11 A. No.

12 Q. Okay. You don't remember that?

13 A. (Shakes head side to side.)

14 Q. Okay. So the game that you're blindfolded, how did that
15 work? How -- what were you blindfolded with?

16 A. A book.

17 Q. A book?

18 A. (Shakes head up and down.)

19 Q. Tell me how that worked.

20 A. They put a book in my lap and I was trying to guess what
21 it was, but I didn't get it right.

22 Q. Okay. So maybe I asked a bad question. Do you know
23 what a blindfold is?

24 A. (Shakes head up and down.)

25 Q. What does that -- I'm sorry. You didn't answer yes or
26 no.

27 A. Yes.

28 Q. Okay. What does a blindfold do?

1 A. Covers your eyes.

2 Q. So you couldn't see; right?

3 A. Yes.

4 Q. Okay. So when the book was in your lap, were your eyes
5 covered so you couldn't see?

6 A. Yes.

7 Q. What was covering your eyes, if you remember?

8 A. A black strap.

9 Q. A black strap. Okay.

10 Were you sitting down when that happened?

11 A. Yes.

12 Q. Okay. Now, you remember a book; right?

13 A. Yes.

14 Q. Do you remember -- did you feel this book with your
15 hands?

16 A. Yes.

17 Q. All right. Did you feel any objects with your feet?

18 A. No.

19 Q. Okay. Do you remember having any other objects in your
20 hands other than a book?

21 A. No.

22 Q. Do you remember telling a police officer that -- let me
23 ask a better question. I'm going to start again.

24 How many objects do you remember touching yourself?

25 A. Two.

26 Q. What were the objects?

27 A. A book and a pencil.

28 Q. A pencil?

1 A. (Shakes head up and down.)

2 Q. You're shaking your head. Does that mean yes?

3 A. Yes.

4 Q. Okay. Thank you.

5 Did the teacher use other objects with other
6 students?

7 A. Yes.

8 Q. He used lots of different objects; right?

9 A. Yes.

10 Q. All right. Could you remember what some of those other
11 objects were?

12 A. A pen, a notebook -- that's all I remember.

13 Q. Okay. Do you remember crayons or paper?

14 A. Oh, yeah. Crayons and papers, too.

15 Q. Do you remember if the teacher had a taste game that you
16 played, where you taste something in your mouth?

17 A. No.

18 Q. Do you remember telling an officer that he used water --

19 A. No.

20 Q. -- to put in someone's mouth? You don't remember that?

21 A. No.

22 Q. Okay. Could you remember anything else about anything
23 that was put into anybody's mouth?

24 A. No.

25 Q. So you couldn't remember seeing anything go into
26 anybody's mouth in your class?

27 A. No.

28 Q. You don't recall playing the taste game yourself?

1 A. No.

2 Q. Okay. All right.

3 MR. MADDEN: I have no further questions.

4 THE COURT: Cross-examination.

5 CROSS-EXAMINATION

6 BY MS. FILO:

7 Q. Hi, Diego.

8 A. Hi.

9 Q. I just have one question for you. So you saw the game
10 played with all of the other class people there, all your
11 classmates?

12 A. Yes.

13 Q. Did you ever have to stay back at recess to play the
14 game with Mr. Chandler all by yourself?

15 A. No.

16 Q. No? Okay. Thank you, Diego.

17 THE COURT: Recross -- I mean, redirect?

18 MR. MADDEN: Nothing, Your Honor.

19 THE COURT: Okay. Thank you, Diego. You could
20 step down, go back with your mother, and you are free to
21 leave. Thank you very much.

22 MR. MADDEN: Your Honor, I have a couple of
23 witnesses, at least one of whom was lost. I hope they are
24 found. If I may be excused? It may take me a couple of
25 minutes.

26 THE COURT: Yes.

27 CHRIS DOE,

28 Being called as a witness on behalf of the

1 Defendant, having been first duly sworn, was examined and
2 testified as follows:

3 MR. MADDEN: So I'm going to put this microphone --
4 don't be scared by this. We have to hear you. Okay? You
5 see your mom out there; right?

6 THE WITNESS: (Shakes head up and down.)

7 MR. MADDEN: Okay. All right.

8 The record reflect that Chris' mother is here.
9 There is also a Spanish translator. Although I don't think
10 it's necessary for purposes of my direct of this witness, it
11 may be necessary and we'll adjust, if that's okay with the
12 Court?

13 THE COURT: That's fine.

14 Good morning.

15 THE WITNESS: Good morning.

16 THE COURT: What's your name?

17 THE WITNESS: Chris.

18 THE COURT: Could you spell it for me, Chris?

19 THE WITNESS: C-h-r-i-s.

20 THE COURT: Okay. Lawyers, as you know, are going
21 to ask you some questions. Nothing to be nervous about.
22 This shouldn't take very long. Okay?

23 THE WITNESS: (Shakes head up and down.)

24 THE COURT: Mr. Madden.

25 MR. MADDEN: Thank you.

26 DIRECT EXAMINATION

27 BY MR. MADDEN:

28 Q. All right. Chris, my name is Mr. Madden. We just met

1 in the hallway; right?

2 A. Yes.

3 Q. All right. So I want to go over some rules with you.

4 There aren't very many rules, but here's what they are.

5 First, I want to make sure when you answer a question, and if

6 the answer is yes or the answer is no, I want you to tell me

7 the word yes or the word no instead of shaking your head up

8 and down if it's yes, and instead of shaking your head left

9 to right if it's no. Do you understand what I mean?

10 A. Yes.

11 Q. Okay. So even though we say these are rules, sometimes

12 when we start to ask witnesses questions, they kind of forget

13 the rules and they might not use words. And so if you forget

14 to use the word yes or no, I'll ask you: Do you mean yes or

15 do you mean no. Okay?

16 A. Yes.

17 Q. Okay. And then finally, I want you to make sure that

18 you understand my question before you give me an answer.

19 Okay?

20 A. Yes.

21 Q. If I ask a question that you do not understand the

22 answer, just tell me that you don't understand and I'll use

23 other words so that you will understand. Okay?

24 A. Yes.

25 Q. All right. So just do your best. Okay?

26 A. Yes.

27 Q. All right. Chris, what grade are you going into?

28 A. Fourth.

1 Q. So you just finished the third grade?

2 A. Yes.

3 Q. All right. You go to O.B. Whaley?

4 A. Yes.

5 Q. All right. You are doing a good job.

6 Do you remember who your teacher was for the second
7 grade at O.B. Whaley?

8 A. Ms. Lippell (phonetic).

9 Q. Do you ever have Mr. Chandler as your teacher?

10 A. Yes.

11 Q. Was that at O.B. Whaley?

12 A. Yes.

13 Q. Do you remember what grade you were in then?

14 A. No.

15 Q. It's okay. When you were in Mr. Chandler's class, were
16 there second-graders and third-graders there?

17 A. Yes.

18 Q. So it was a combination class? Had you heard that word
19 before?

20 A. Yes.

21 Q. And that's what it was, a combination class?

22 A. Yes.

23 Q. You think you might have been a second-grader then?

24 A. Yes.

25 Q. Okay. So as a second-grader, you would have sat with
26 the students along the side of the classroom that had the
27 sink and the computers?

28 A. Yes.

1 Q. Because that's the side the second-graders sat on;
2 right?

3 A. Yes.

4 Q. Okay. Now, do you remember when you were in the second
5 grade with Mr. Chandler playing a game where you tried to
6 guess what something is that you are holding?

7 A. Yes.

8 Q. And did you play that with Mr. Chandler?

9 A. Yes.

10 Q. Did the whole class play that?

11 A. Yes.

12 Q. Boys and girls?

13 A. Yes.

14 Q. Do you remember how many times you saw that game played
15 in the class?

16 A. No.

17 Q. Was it more than one time?

18 A. Yes.

19 Q. Okay. And was a blindfold used in that game?

20 A. Yes.

21 Q. Okay. Do you know what a blindfold is?

22 A. Yes.

23 Q. Tell me what a blindfold is.

24 A. It's when you wrap it around right here and you can't
25 see anything.

26 Q. So you put your hands behind your head like it's --
27 something that goes over your eyes and ties in the back?

28 A. Um-hum.

1 Q. Okay. Now, do you remember something like that being
2 used in the game?

3 A. No.

4 Q. You don't remember a blindfold?

5 A. No.

6 Q. Do you remember a blanket being used to cover your eyes?

7 A. No.

8 Q. But something was used to cover your eyes; right?

9 A. Yes, something, but I forgot.

10 Q. Okay. Fair enough.

11 So there were two different kinds of games, right,
12 where you were trying to guess things?

13 A. Yes.

14 Q. One is when you were trying to guess what something felt
15 like; right?

16 A. Yes.

17 Q. And the other game was that you were trying to guess
18 what something tasted like?

19 A. Yes.

20 Q. All right. So let's talk about the one where you were
21 trying to guess what something felt like. We'll call that
22 the feel game. Okay?

23 A. Yes.

24 Q. Okay. You played this game yourself?

25 A. No.

26 Q. You did the feel game or you just saw the feel game
27 played?

28 A. I don't know.

1 Q. Okay. You don't know if you actually tried to feel
2 objects on you, but some students did?

3 A. Yes.

4 Q. Okay. Where were the students? Were they standing or
5 sitting or laying down when they felt the objects?

6 A. Standing.

7 Q. Were any students ever laying down when they felt the
8 objects?

9 A. Some students.

10 Q. Some students?

11 A. Yeah.

12 Q. So you remember some students actually laying down?

13 A. Yes.

14 Q. And they were blindfolded?

15 A. Yes.

16 Q. Okay. So while they were blindfolded, whether it was
17 standing or laying down, do you remember any of the objects
18 or things that they had to feel to guess? I'm sorry. It
19 looks like you're not sure?

20 A. (Shakes head up and down.)

21 Q. Is that correct?

22 A. (Shakes head up and down.)

23 Q. Yes?

24 A. Yes.

25 Q. Okay. Do you remember telling a police officer that
26 some of the objects that you saw during the feel game
27 included small paper, paper clips, mini post and pencils?

28 A. Yes.

1 Q. You remember telling a police officer that?

2 A. Yes.

3 Q. Okay. Does that help you remember about the things that
4 you saw people trying to guess?

5 A. Yes.

6 Q. Okay. And when they were laying down trying to feel
7 objects, the objects were put against their feet?

8 A. No.

9 Q. What were they -- what did the objects touch? What part
10 of the student's body?

11 A. The arms.

12 Q. Their arms. Okay.

13 So you remember the objects touching their arms,
14 and who was putting the objects against their arms?

15 A. I'm not sure.

16 Q. Would that have been Mr. Chandler?

17 A. Oh, yes.

18 Q. Okay. And do you remember telling a police officer that
19 the children feel it on their feet?

20 A. No.

21 Q. Okay. You don't remember that?

22 A. No.

23 Q. You don't remember telling a police officer that?

24 A. No.

25 Q. That doesn't help you remember if you saw that or not?

26 I think I confused you with a bad question. You don't

27 remember telling the police officer and you don't remember if
28 that happened; right?

1 A. Yes.

2 Q. Yes. Thank you. So let's talk about the taste game.

3 Okay? That's the second one?

4 A. Yes.

5 Q. All right. And do you remember the taste game?

6 A. Yes.

7 Q. And was that kind of the same as the feel game?

8 A. Yes.

9 Q. But instead of feeling an object with the part of your
10 body, some kind of candy or food or something was put in a
11 student's mouth and they had to try to guess what the food or
12 candy was; right?

13 A. Yes.

14 Q. Okay. And do you remember the kinds of things that you
15 saw put in students' mouths? What kind of snack or candy or
16 food or anything?

17 A. I don't remember.

18 Q. Do you remember telling a police officer chips?

19 A. Yes.

20 Q. And does that help you remember that maybe you saw some
21 chips being placed in students' mouths?

22 A. Yes.

23 Q. Okay. And Mr. Chandler also put during the taste game
24 water into some students' mouths; right?

25 A. Yes.

26 Q. And how did he put the water in their mouth?

27 A. I don't know.

28 Q. Well, I mean, was it out of a cup or a bottle or --

1 A. I think a cup.

2 Q. So the water that went into the students' mouths came
3 out of a cup?

4 A. Um-hum.

5 Q. Okay. And were there different flavors of waters that
6 the students tasted?

7 A. No.

8 Q. Okay. But it was in a cup? Do you remember the color
9 of the cup?

10 A. No.

11 Q. Okay.

12 MR. MADDEN: I have no further questions, Your
13 Honor.

14 THE COURT: Cross-examination.

15 MS. FILO: Thank you, Your Honor.

16 CROSS-EXAMINATION

17 BY MS. FILO:

18 Q. Hi, Chris.

19 A. Hi.

20 Q. So you played the game in the classroom with all of the
21 other kids there; right?

22 A. Yes.

23 Q. That's when you saw the game happening too?

24 A. Yes.

25 Q. Yeah? Do you remember you said that the game was played
26 more than one time; is that right?

27 A. Yes.

28 Q. Did the game happen more than one time on the same day

1 or were they different days?

2 A. Same day.

3 Q. Okay. So just played -- the different kids got to play
4 it, but all on the same day?

5 A. Yes.

6 Q. Okay. So this is a harder question. Do you remember
7 what time of year it was that the game was played?

8 A. No.

9 Q. No? Okay.

10 And, Chris, you never had to stay in at recess time
11 and play the game all by yourself, did you?

12 A. No.

13 Q. No? Okay. Thank you.

14 MS. FILO: Nothing further.

15 THE COURT: Redirect?

16 MR. MADDEN: Nothing, Your Honor.

17 THE COURT: Okay. Thank you, Chris. You could
18 step down. You could go back with your mother and you are
19 free to leave.

20 MR. MADDEN: I have one more, Your Honor.

21 THE COURT: Okay. Thank you.

22 MR. MADDEN: Could we approach the bench, Your
23 Honor?

24 THE COURT: Yes.

25 (Whereupon, there was a discussion at the bench.)

26 THE COURT: Would counsel come back again.

27 (Whereupon, there was a discussion at the bench.)

28 THE COURT: Sorry for the delay, ladies and

1 gentlemen. I have been talking with the lawyers, trying to
2 get a sense of how the case is proceeding. I'm very
3 comfortable that Mr. Madden is making every effort to have
4 his witnesses he wishes to call here and arranged. A number
5 of issues have come up with certain witnesses that have
6 caused many delays.

7 In any event, the point I'm trying to make, we're
8 going to be taking a recess shortly until 1:30. It's my
9 sense that we'll have witnesses here for the entire
10 afternoon, and I wanted to let you know that based on some
11 discussions I've had with the lawyers and my sincere belief,
12 sometime next week this case is going to be given to you for
13 your deliberations. I expect sometime next week the evidence
14 will be concluded. You will hear instructions of law and you
15 will hear closing remarks sometime next week. Tomorrow at
16 the end of the day, before we break for the weekend, I'll try
17 to give you a better assessment of when next week, but it's
18 going to happen sometime next week.

19 I'm telling you this because, you know, at least
20 this week we've have many delays. We've had some times where
21 we're not in session and I know that could be frustrating for
22 you. I wanted to give you an update that the lawyers, as far
23 as I'm concerned, are making every effort to get the
24 witnesses here. Thank you for your patience. I hope you
25 benefit from the long lunch hour and we'll see you at 1:30.

26 The jury has left the courtroom. I don't think
27 there is anything for us to address on the record other than
28 we'll see you at 1:30. I will order both attorneys and Mr.

1 Chandler here at 1:30 and we'll continue with the trial.

2 MR. MADDEN: Thank you, Your Honor.

3 (Whereupon, the Court took the noon recess.)

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

AFTERNOON PROCEEDINGS

1
2 THE COURT: Thank you, ladies and gentlemen.
3 Record will reflect all members of the jury are present, both
4 counsel are present.

5 And, Mr. Madden, ready to call your next witness?

6 MR. MADDEN: Yes, Your Honor. May I be excused?

7 THE COURT: Yes. Thank you.

8 MARY DOE,

9 Being called as a witness on behalf of the
10 Defendant, having been first duly sworn, was examined and
11 testified as follows:

12 MR. MADDEN: Watch your step. If you would sit in
13 this chair. Scoot it up a little bit so it's a little closer
14 to the desk here. Perfect. If you could sit up straight,
15 that will be perfect. Move the microphone a little higher so
16 it's the same level as your mouth. If you could stay in
17 about this position. Could you see your mom from here?

18 THE WITNESS: Yes.

19 MR. MADDEN: Your Honor, may the record reflect the
20 witness's mother is in the front room behind the railing
21 assisted by a Spanish speaking interpreter.

22 THE COURT: Great. Thank you.

23 Good afternoon.

24 THE WITNESS: Good afternoon.

25 THE COURT: What is your name?

26 THE WITNESS: Mary.

27 THE COURT: Mary?

28 THE WITNESS: Um-hum.

1 THE COURT: Could you spell your name, Mary?

2 THE WITNESS: M-a-r-y.

3 THE COURT: Okay. Your voice is kind of soft, so
4 when the lawyers ask you questions, I need you to try to
5 speak a little louder. Talk into the microphone so we could
6 hear you. So Mr. Madden is going to go over a few little
7 rules with you before you start testifying. Okay?

8 THE WITNESS: Okay.

9 THE COURT: Thank you.

10 DIRECT EXAMINATION

11 BY MR. MADDEN:

12 Q. All right, Mary, I moved the microphone because I wanted
13 to be aligned between you and me. Okay?

14 A. Okay.

15 Q. Then I think we'll pick up your voice a little better.
16 That's better for me.

17 Okay. Now, let me review some basic rules with
18 you. I think you know what they are, but I want to make sure
19 that you understand. When I ask you questions and if the
20 answer is yes, I would like you to answer out loud yes.
21 Okay?

22 A. Okay.

23 Q. I want you to do that instead of shaking your head up
24 and down when you mean yes. Okay?

25 A. Okay.

26 Q. And if I ask you a question and the answer is no, I want
27 you to say no rather than shake your head to the left and to
28 the right when you mean no. Okay?

1 A. Okay.

2 Q. The reason that I'm asking you to do that is the lady in
3 front of you, the court reporter, has to take everything we
4 say and she could only write down words that she hears.

5 Okay?

6 A. Okay.

7 Q. So sometimes even though we know what the rules are, we
8 may forget them. You may shake your head up and down, left
9 or right. If you do that, I will stop you and I'll say: Do
10 you mean yes or do you mean no. Okay?

11 A. Okay.

12 Q. All right. You don't have to be perfect. Nobody is
13 perfect. I'm sure you're nervous; right?

14 A. Yes.

15 Q. All right. It won't be so hard. You are going to just
16 answer questions as best you can. Okay?

17 A. Okay.

18 Q. All right. Mary, what grade are you going into?

19 A. Fifth.

20 Q. Okay. Do you go to O.B. Whaley?

21 A. Yes.

22 Q. When did you start going to O.B. Whaley? What grade
23 were you in?

24 A. Um, kindergarten.

25 Q. Good. So you've been there all through grammar school;
26 right?

27 A. Yes.

28 Q. All right. One year was Mr. Chandler your teacher?

1 A. Yes.

2 Q. Do you remember what grade you were in the year that Mr.
3 Chandler was your teacher?

4 A. Third grade.

5 Q. Third grade. Okay.

6 Do you remember what the classroom number was for
7 the room that was Mr. Chandler's when you were in the third
8 grade?

9 A. No.

10 Q. Okay. That year, there were second-graders and
11 third-graders in Mr. Chandler's class; right?

12 A. Yes.

13 Q. So if you were in the third grade, I'll bet you sat over
14 on the side of the classroom by the U-shaped or C-shaped
15 table; right?

16 A. Yes.

17 Q. And that's the side of the classroom that the
18 third-graders sat on; right?

19 A. Yes.

20 Q. Third-graders sat on the right side of the room when the
21 second-graders sat on the left; right?

22 A. Yes.

23 Q. Okay. Now, the year that you were in Mr. Chandler's
24 class, do you remember playing a game in the classroom that
25 involved being blindfolded and trying to guess what an object
26 was?

27 A. Yes.

28 Q. Okay. Your answer was yes?

1 A. Yes.

2 Q. Okay. I'm asking you to speak up a little louder
3 because your voice is soft. That's okay.

4 A. Okay.

5 Q. All right. So did you watch other students play this
6 game?

7 A. Yes.

8 Q. Did you also play the game yourself?

9 A. I just told the kid where to go and do other stuff.

10 Q. You told the kid where to go and do other stuff?

11 A. Yeah, like, to go straight or right or left.

12 Q. That sounded like it was kind of a guiding game?

13 A. Yes.

14 Q. Is that what it was?

15 A. Yes.

16 Q. Where the student that you were guiding would be
17 blindfolded?

18 A. Yes.

19 Q. And you would tell that student whether to go straight
20 or left or right?

21 A. Yes.

22 Q. That student had to kind of trust you; right?

23 A. Yes.

24 Q. Okay. So you remember doing that?

25 A. Yes.

26 Q. You remember who the other student was?

27 A. No.

28 Q. Okay. So do you remember other parts of that game? For

1 example, a part of the blindfold game where students were
2 blindfolded and then they had different types of food or
3 snacks or candy put in their mouth and had to guess what it
4 was?

5 A. Yes.

6 Q. All right. Did you remember another form of that game
7 where students were blindfolded and they had to feel certain
8 objects that they couldn't see on either their hands or their
9 feet and guess what those objects were?

10 A. Yes.

11 MS. FILO: Objection, Your Honor. Compound.

12 THE COURT: Sustained. I'll strike the answer. If
13 you could break it down for her.

14 MR. MADDEN: All right.

15 BY MR. MADDEN:

16 Q. So I made that too big. Let's break it down a little
17 bit.

18 Do you remember playing or seeing a feel game where
19 the students had to feel objects in their hands?

20 A. Yes.

21 Q. Do you remember a feel game where the students had to
22 feel an object against their foot or their leg?

23 A. Yes.

24 Q. Okay. So let's start with the feel game. Okay?

25 A. Okay.

26 Q. Do you remember how the students were blindfolded?

27 A. Yes.

28 Q. Could you describe the blindfold that you remember

1 seeing?

2 A. It was like something for to go to sleep.

3 Q. Okay.

4 A. The blindfolded thing.

5 Q. Like a sleep mask?

6 A. Yes.

7 Q. Okay. All right. And for the feel game, was it always
8 that sleep mask type of blindfold, or were there other types
9 of blindfolds?

10 A. Other types of blindfolds.

11 Q. Okay. Hang on for a minute. Your voice is slipping a
12 little bit. I think that you said there are also -- were
13 other types of blindfolds?

14 A. Yes.

15 Q. What other types of blindfolds do you remember?

16 A. Like, I forgot the word, but there was, like, this, um,
17 kind of like a blanket.

18 Q. A blanket?

19 A. Yeah.

20 Q. Okay. And that would cover a student's eyes?

21 A. Yes.

22 Q. Could you remember anything else that was used to cover
23 the student's eyes?

24 A. No.

25 Q. Okay. So the students that were feeling these objects,
26 were they standing or seated or lying on the ground?

27 A. Lying on the ground.

28 Q. Okay. Were they seated sometimes in a chair also?

1 A. I don't remember.

2 Q. Okay. Now, the objects that they were feeling in their
3 hands, do you remember what these objects were?

4 A. I remember some.

5 Q. Tell me what you could remember.

6 A. Paper clips, water bottle --

7 Q. Water bottle?

8 A. Yeah, and a toilet paper.

9 Q. Toilet paper. Anything else?

10 A. No.

11 Q. Do you remember whether there were any pencils or
12 crayons or erasers?

13 A. There was some pencils, crayon, and eraser.

14 Q. Pencil, crayon, and eraser?

15 A. Yes.

16 Q. Okay. So the students who would play, would some of
17 them feel the objects with their hands? Let me ask it a
18 different way.

19 The students that were feeling the objects, were
20 these objects placed on their hands and their feet?

21 A. Yes.

22 Q. So they -- each student who was doing this game had some
23 unknown objects placed on or around their hands and on or
24 around their feet; right?

25 A. Yes, and some under their head.

26 Q. Some what?

27 A. On their head.

28 Q. Where on their head?

1 A. On right, like, on the hair.

2 Q. Like on top of their head?

3 A. Yeah.

4 Q. Okay. On their hair?

5 A. Yes.

6 Q. Okay. Now, let's move over to the tasting game. Okay?

7 A. Okay.

8 Q. By the tasting game, do you understand that to be where
9 a blindfolded student had something put in his or her mouth
10 and had to guess what it was?

11 A. Yes.

12 Q. Okay. And do you remember what kinds of things you saw
13 being placed into this student's mouth?

14 A. A -- chips.

15 Q. Okay. Anything else?

16 A. Granola bars.

17 Q. A whole granola bar or a piece of one?

18 A. A piece of one.

19 Q. Okay. Anything else?

20 A. Candy.

21 Q. What kind of candy do you remember?

22 A. I don't remember what kind.

23 Q. Just candy?

24 A. Yeah.

25 Q. Okay. Do you remember anybody stays behind -- I'm
26 sorry. I will try that question again.

27 The things that you've been talking about, the feel
28 game with the hands and the feet and the taste game, did you

1 actually do either of those games?

2 A. No.

3 Q. Or do you -- you just did the guiding game?

4 A. Yeah.

5 Q. Okay. So then you just saw other kids do the feel game
6 and the taste game?

7 A. Yes.

8 Q. Okay. Was everybody in the class --

9 A. Yes.

10 Q. -- participating?

11 A. Yes.

12 Q. Okay.

13 MR. MADDEN: I have no further questions.

14 THE COURT: Thank you.

15 Cross.

16 MS. FILO: Thank you, Your Honor.

17 CROSS-EXAMINATION

18 BY MS. FILO:

19 Q. Hi, Mary.

20 A. Hi.

21 Q. So, Mary, you didn't -- you said you never played this
22 taste game; right?

23 A. I don't remember.

24 Q. Okay. But you saw it played in the class? You saw some
25 other kids play it?

26 A. Yes.

27 Q. Do you know who played it?

28 A. I don't remember.

1 Q. Okay. You said that you remembered chips and candy and
2 a granola bar; right?

3 A. Yes.

4 Q. Okay. Mary, did you ever see Mr. Chandler use anything
5 or put anything in a student's mouth that was like the size
6 of a banana?

7 A. No.

8 Q. What?

9 A. No.

10 Q. Anything that he would push in and out of one of your
11 classmate's mouths?

12 A. No.

13 Q. No? Anything where water came spurting out?

14 A. No.

15 Q. No? Okay. Thank you, Mary.

16 MS. FILO: Nothing further.

17 THE COURT: Okay.

18 MR. MADDEN: Thank you.

19 THE COURT: Okay. Thank you, Mary. You could step
20 down and go return to your mother and you are free to leave.

21 THE WITNESS: Okay.

22 THE COURT: Thank you.

23 MR. MADDEN: I will get the next witness. I
24 believe we have three more.

25 THE COURT: Thank you.

26 JORGE DOE,

27 Being called as a witness on behalf of the
28 Defendant, having been first duly sworn, was examined and

1 testified as follows:

2 MR. MADDEN: Okay. Scoot your chair up close to
3 the table here. Good. Perfect. Are you all right?

4 THE WITNESS: Yes.

5 MR. MADDEN: All right.

6 THE COURT: Good afternoon.

7 THE WITNESS: Good afternoon.

8 THE COURT: What is your name?

9 THE WITNESS: Jorge.

10 THE COURT: How do you spell it?

11 THE WITNESS: J-o-r-g-e.

12 THE COURT: Thank you, Jorge. Mr. Madden is going
13 to be asking you some questions. He's going to explain to
14 you a few rules. Okay? And it's okay to be nervous. Most
15 people are nervous when they come into the courtroom and take
16 that witness stand -- excuse me -- witness seat. Okay?

17 THE WITNESS: (Shakes head up and down.)

18 THE COURT: Mr. Madden, when you are ready, direct.

19 MR. MADDEN: One moment please, Your Honor.

20 Thank you.

21 DIRECT EXAMINATION

22 BY MR. MADDEN:

23 Q. Jorge, again, my name is Mr. Madden. Okay?

24 A. Okay.

25 Q. So I'm going to have to go over a couple of rules. I
26 know you heard about those out there, but since I wasn't
27 there, I want to make sure that you understand. Okay?

28 A. Yes.

1 Q. So you have a good voice, but it's soft. All right? So
2 I would like you to try to speak up a little more when you
3 answer questions so that we could hear you. Okay?

4 A. Okay.

5 Q. When I ask you a question, if the answer is yes, I would
6 like you to say yes rather than shake your head up and down
7 meaning yes. Okay?

8 A. Okay.

9 Q. And if I ask you a question and the answer is no, I
10 would like you to say no rather than shaking your head left
11 and right. Okay?

12 A. Okay.

13 Q. And the reason that I'm doing that is that the lady in
14 front of you, the court reporter, has to get down everything
15 that we say and she could only get down actual words. Okay?

16 A. Okay.

17 Q. So if you forget -- that's okay. If you forget, I will
18 remind you, but you need to know. Okay?

19 A. Sounds good.

20 Q. Then the final thing that I want you to know, or make
21 sure that you know, is that if I ask you a question and you
22 don't understand my question, let me know and I'll use other
23 words and ask a question that you do understand. Okay?

24 A. Okay.

25 Q. All right. So, Jorge, what grade are you going into?

26 A. I'm going to go to sixth grade.

27 Q. To the sixth grade. Who is your teacher going to be?

28 A. I'm not sure yet.

1 Q. Okay. You haven't been assigned teachers yet?

2 A. No.

3 Q. Okay. And you go to O.B. Whaley?

4 A. Yes.

5 Q. How long have you attended O.B. Whaley School?

6 A. Since kindergarten.

7 Q. Okay. So you have been there all along?

8 A. Yes.

9 Q. All right. O.B. Whaley goes up to the sixth grade?

10 A. Uh, yeah.

11 Q. So then after the sixth grade, you go to junior high
12 school?

13 A. Yes.

14 Q. Okay. Was Mr. Chandler ever your teacher at O.B.
15 Whaley?

16 A. Yes.

17 Q. What grade were you in when he was?

18 A. Third grade.

19 Q. One more rule. Always one more rule. Please wait until
20 I ask my whole question before you give an answer. Okay?

21 A. Okay.

22 Q. All right. Thank you.

23 So you had Mr. Chandler for the third grade?

24 A. Yes.

25 Q. And do you remember what classroom number Mr. Chandler
26 had?

27 A. No.

28 Q. Okay. That year that you were in the third grade, there

1 were also second-graders in Mr. Chandler's class; correct?

2 A. Um, no.

3 Q. You don't remember any second-graders in the class that
4 year?

5 A. No.

6 Q. Okay. So that was the school year 2010/2011; correct?

7 A. Yes.

8 Q. So you were in the straight third grade class?

9 A. Yes.

10 Q. No second-graders in your class?

11 A. No.

12 Q. Okay. All right.

13 Do you remember that year playing a game where you
14 were blindfolded and tried to guess the thing was -- that you
15 were holding?

16 A. Um, yes.

17 Q. Okay. Sounds like you remember it a little bit, but
18 you're not so sure?

19 A. Um, not so sure, but I remember something like that.

20 Q. Okay. We'll see what you remember. I will ask you some
21 more questions about it. Did you watch this game? That is,
22 watch other students play this game?

23 A. Yes.

24 Q. And do you remember if you actually played the game
25 yourself?

26 A. Yes.

27 Q. You did?

28 A. Yes.

1 Q. Okay. So you played it and you watched others play it?

2 A. Yes.

3 Q. Okay. Did all of the students in the class play it?

4 A. Well, yeah.

5 Q. Okay. Boys and girls?

6 A. Yes.

7 Q. Okay. How many times do you think you remember playing
8 that game in the third grade?

9 A. I remember playing it once or twice.

10 Q. Okay. How about watching other kids play the game? How
11 many times you think you saw them do that?

12 A. Once or twice.

13 Q. Now, was a blindfold used on the students as part of
14 this game?

15 A. Yes.

16 Q. Could you tell me a little bit what the blindfold looked
17 like and what it was made out of?

18 A. Um, like the things you put on to sleep, like cover your
19 eyes and stuff.

20 Q. Okay. I think I heard you say the kinds of things you
21 put on to sleep and cover your eyes?

22 A. Yeah.

23 Q. Could you speak up a little bit?

24 A. Yes.

25 Q. Okay. Have you ever heard of the expression "a sleep
26 mask"?

27 A. No.

28 Q. Okay. But it's something that goes over your eyes that

1 you can't see out of it; correct?

2 A. Yes.

3 Q. That's what you mean by blindfold?

4 A. Yes.

5 Q. Okay. Now, were there different kinds of things that
6 students did when they were blindfolded?

7 A. Um, no.

8 Q. Did the -- as part of the -- when the students were
9 blindfolded, did they sometimes taste things in their mouth?

10 A. Yes.

11 Q. Okay. And as part of the things that they did when they
12 were blindfolded, did they feel things that were placed
13 against either their hands or their feet?

14 A. Against their hands.

15 Q. Against their hands. Okay.

16 Was there anything -- any other kind of a game that
17 was played that you remember when the kids were blindfolded?

18 A. No.

19 Q. Okay. So we could talk about the same thing, I'll talk
20 about the game where things are put in the mouth as the taste
21 game. Okay?

22 A. Okay.

23 Q. Then, later I will talk about the game where objects
24 were put in or on the hands of the student as the feel game.
25 Okay?

26 A. Okay.

27 Q. All right. So let's talk about the taste game first.

28 Okay?

1 A. Okay.

2 Q. For the taste game, would the students be standing or
3 sitting in a seat or laying on the ground?

4 A. Standing.

5 Q. Okay. Where would Mr. Chandler be when the kids were
6 standing?

7 A. In the front or to the side.

8 Q. And what would he be doing?

9 A. Like, putting the stuff in their mouth.

10 Q. So he would be standing in front of the students or to
11 the side of the students or behind the students?

12 A. To the side or to the front.

13 Q. To the side?

14 A. To the side or in the front.

15 Q. Or in the front?

16 A. Yes.

17 Q. So again, we're talking about the taste game; right?

18 A. Yes.

19 Q. So what kinds of things would be put in the students'
20 mouths for them to taste?

21 A. Lollipops.

22 Q. Okay. Just lollipops or maybe something else?

23 A. Just lollipops.

24 Q. That's all you remember is lollipops?

25 A. Yes.

26 Q. And were there different flavors of lollipops?

27 A. Yes.

28 Q. Okay. So the idea was to guess the flavor of whatever

1 lollipop was in your mouth?

2 A. Yes.

3 Q. Okay. And when the lollipop -- you remember doing that
4 game yourself; right?

5 A. Yes.

6 Q. And then would you lick the lollipop?

7 A. Yes.

8 Q. That's how you tasted it; right?

9 A. Yes.

10 Q. Did he tell you to lick the lollipop?

11 A. Yes, and he explained the rules before we played.

12 Q. I'm sorry. You are going a little bit too fast. Could
13 you say that again?

14 A. He explained the rules before we played the game.

15 Q. He explained the rules to you before you played the
16 game?

17 A. Yes.

18 Q. Tell me what he explained to you.

19 MS. FILO: Objection, Your Honor. Hearsay.

20 THE COURT: Sustained. Hold on. He's going to ask
21 you another question.

22 MR. MADDEN: All right.

23 BY MR. MADDEN:

24 Q. Do you remember telling a police officer that besides
25 the lollipops, he used drinks and crackers?

26 A. No.

27 Q. As you sit here today, if you think hard, do you think
28 maybe he used some drinks too?

- 1 A. Yes. Yeah, I remember that.
- 2 Q. You are sort of remembering that now?
- 3 A. Yes. Well --
- 4 Q. Could you -- what drinks do you remember?
- 5 A. I remember water, juice, and I think Snapple.
- 6 Q. Water, juice, and Snapple?
- 7 A. Yes.
- 8 Q. And were those drinks put in a student's mouth?
- 9 A. Yes.
- 10 Q. And how did the drinks get into the student's mouth?
- 11 A. He put them in their hand and he told them to drink it.
- 12 Q. All right. I want you to do me a favor, Jorge. You are
- 13 speaking low and too fast. I want you to slow down a little
- 14 bit and speak up. I know that it's odd. Could you do that
- 15 for me?
- 16 A. He put the drink in their hands and he told them to
- 17 drink from it.
- 18 Q. So the student -- was it a drink in a bottle or a cup or
- 19 what?
- 20 A. It was in a bottle.
- 21 Q. What kind of a bottle?
- 22 A. Like for the water, a water bottle, the Snapple, a
- 23 Snapple, and juice, like a juice box, or something like that.
- 24 Q. The juice was in a juice box; right?
- 25 A. Yes.
- 26 Q. And the Snapple was in what?
- 27 A. The Snapple cup.
- 28 Q. A Snapple cup. You mean the bottle that you buy it in?

1 A. Yeah.

2 Q. The bottle that you buy it in, you screw the cap off?

3 A. Yes.

4 Q. Okay. And the water, what was that in?

5 A. It was in a water bottle.

6 Q. Like a water bottle you have on the desk to drink during
7 the day?

8 A. Yes.

9 Q. Okay. Now, what about crackers? If you think hard,
10 could you remember some crackers being in your mouth?

11 MS. FILO: Objection, Your Honor. May we approach,
12 please?

13 THE COURT: Yes.

14 (Whereupon, there was a discussion at the bench.)

15 THE COURT: Thank you. You were going to continue,
16 Mr. Madden.

17 MR. MADDEN: Thank you, Your Honor.

18 BY MR. MADDEN:

19 Q. So I think you said earlier that the teacher would --
20 did the teacher demonstrate for you how to do the taste game?

21 A. Um, no.

22 Q. What did he say about the taste game?

23 MS. FILO: Objection, Your Honor. Hearsay.

24 THE COURT: Sustained. He's going to ask you
25 another question.

26 THE WITNESS: Okay.

27 THE COURT: Just wait for the next question.

28 MR. MADDEN: I have no further questions of this

1 witness, Your Honor. Thank you.

2 THE COURT: Thank you.

3 Cross.

4 MS. FILO: Thank you.

5 CROSS-EXAMINATION

6 BY MS. FILO:

7 Q. Hi, Jorge.

8 A. Hi.

9 Q. Hi. So Mr. Madden asked you if you remembered some
10 drinks; right?

11 A. Yes.

12 Q. So do you actually remember that, or do you remember
13 because Mr. Madden asked you about it?

14 A. I remember the drinks.

15 Q. Okay. And you said that the teacher would give it to
16 the student and the student would drink it?

17 A. Yes.

18 Q. Okay. So he handed the student a water bottle or a
19 juice bottle or something and told them to drink it?

20 A. Yes.

21 Q. Okay. So, Jorge, you never had to stay back at recess
22 and practice this game, did you?

23 A. No.

24 Q. No? Jorge, do you remember Mr. Chandler putting
25 anything in a student's mouth that was like the size of a
26 banana and pushing it back and forth into the child's mouth?

27 A. No.

28 Q. No? Anything that had any -- anything that was gooey or

1 had like a gooey liquid that came out?

2 A. No.

3 Q. No? Okay. That's all the questions I have. Thank you,
4 Jorge.

5 THE WITNESS: You're welcome.

6 THE COURT: Redirect?

7 MR. MADDEN: Nothing, Your Honor.

8 THE COURT: Thank you, Jorge. You could step down.
9 You could go with your mother and you are free to leave the
10 courtroom. Okay?

11 THE WITNESS: Okay.

12 THE COURT: Thank you.

13 CARL DOE,

14 Being called as a witness on behalf of the
15 Defendant, having been first duly sworn, was examined and
16 testified as follows:

17 MR. MADDEN: His Honor is going to say something to
18 you, then I'm going to ask you some questions from my table.

19 THE COURT: Good afternoon.

20 THE WITNESS: Good afternoon.

21 THE COURT: What's your name?

22 THE WITNESS: Carl.

23 THE COURT: How do you spell your name, Carl?

24 THE WITNESS: C-a-r-l.

25 THE COURT: Okay. Thank you. Mr. Madden and Ms.
26 Filo are going to ask you some questions. We're going to
27 start with Mr. Madden, and he's going to go over a few rules
28 about how we answer questions in the courtroom. Okay?

1 THE WITNESS: (Shakes head up and down.)

2 THE COURT: Thank you.

3 When you are ready, Mr. Madden.

4 MR. MADDEN: Just a minute, Your Honor. Thank you.

5 DIRECT EXAMINATION

6 BY MR. MADDEN:

7 Q. Just a minute, Carl. I need a sip of something.

8 Okay. Carl, my name is Mr. Madden. I'm going to
9 ask you some questions. Okay?

10 A. Okay.

11 Q. The voice is good and deep and loud. What I would like
12 you to do is to make sure that you answer my questions with
13 the word yes when you mean yes. Okay?

14 A. Okay.

15 Q. And with the word no when you mean no. Okay?

16 A. Okay.

17 Q. Please don't shake your head up and down when you mean
18 yes, or shake your head left and right when you mean no?

19 A. Okay.

20 Q. You might wonder why that is, because the court reporter
21 in front of you has to write down all of the words that we're
22 saying, and she could only write down words. Okay?

23 A. Okay.

24 Q. So if you forget while I'm asking you questions, I will
25 just remind you. Okay?

26 A. Okay.

27 Q. And then the other thing is, I want to make sure that
28 you understand my question before you give me an answer.

1 Okay?

2 A. Okay.

3 Q. So if I ask you a question and you don't understand the
4 question, you just tell me you don't understand it and I'll
5 ask a question that you do understand. Okay?

6 A. Okay.

7 Q. All right. What grade are you going into, Carl?

8 A. Fifth grade.

9 Q. Where do you go to school?

10 A. O.B. Whaley.

11 Q. Okay. Have you gone to O.B. Whaley since you were a
12 kindergartner?

13 A. No.

14 Q. What grade did you start O.B. Whaley?

15 A. Um, first grade.

16 Q. Okay. Did you ever have Mr. Chandler as a teacher?

17 A. Yes.

18 Q. And for what grade was that?

19 A. Third.

20 Q. And when you had Mr. Chandler, was every student in the
21 class a third-grader or were there some second-graders?

22 A. Some were second-graders.

23 Q. But you were a third-grader?

24 A. Yes.

25 Q. Then if you were in the back of the class looking at the
26 white board, if -- do you know what I'm talking about?

27 A. Yes.

28 Q. If you were looking forward towards the white board, you

1 were probably sitting over on the right side; right?

2 A. Yes.

3 Q. Okay. Because that's where the third-graders were on,
4 the right side; right?

5 A. Yes.

6 Q. The second-graders were on the left side?

7 A. Okay.

8 Q. That year, do you remember playing a game where the
9 students were blindfolded and they had to guess certain
10 things?

11 A. Yes.

12 Q. And what kind of things would be involved that you had
13 to guess?

14 A. Um, some were, like, paper clips and pennies and,
15 like --

16 Q. I asked a bad question. I will ask you another
17 question. That wasn't your fault. That was mine.

18 Did you play a blindfold game where you had to feel
19 things?

20 A. Yes.

21 Q. Did you play a blindfold game where you had to taste
22 things?

23 A. I forgot.

24 Q. Okay. That's all right.

25 Did you play a blindfold game that was like a
26 guiding game?

27 A. No.

28 Q. Okay. Just a minute.

1 Do you remember seeing a game played where a
2 blindfold of the student had to taste food or candy in their
3 mouth?

4 A. Um, I forgot.

5 Q. Okay. You remember telling a police officer that you
6 saw a game where students had to taste things in their mouth?

7 A. I forgot.

8 Q. Okay. Do you remember telling a police officer that you
9 played a blindfold game where you had to feel things?

10 A. Yes.

11 Q. Okay. So you do remember telling the officer that?

12 A. Um, yes.

13 Q. Do you remember actually doing that?

14 A. Yes.

15 Q. Okay. And is it something that you would do yourself
16 with the class?

17 A. Um, maybe.

18 Q. Or was it something that you just saw other people in
19 the class do?

20 A. Other people.

21 Q. Okay. Maybe you played it yourself, but you think you
22 saw other kids do that; right?

23 A. Yes.

24 Q. Tell me what you saw.

25 A. Um, I saw some kids feel, like, some socks and then,
26 like, some paper clips and pennies.

27 Q. So what were they using to feel these things?

28 A. Um, their hands.

1 Q. Did they ever use their feet?

2 A. Sometimes, yeah.

3 Q. So they used both their hands and their feet?

4 A. Yes.

5 Q. And were they blindfolded?

6 A. Yes.

7 Q. Do you remember if they were standing or sitting or
8 lying down when they did any of those things?

9 A. I think they were mostly, um, laying down.

10 Q. Okay. Did they have their shoes and socks on or off?

11 A. Um, on.

12 Q. Both of their shoes and socks were on?

13 A. Their shoes were off, but their socks were on.

14 Q. Okay. Could you tell me the things that you remember
15 them feeling?

16 A. I forgot.

17 Q. Do you recall telling the police officer that the
18 objects included a penny, a paper clip, an eraser, a pen?

19 A. Yes.

20 Q. You remember telling the police officer that?

21 A. Yes.

22 Q. Was that true?

23 A. Uh, yeah.

24 Q. Okay. And do you remember telling a police officer that
25 you saw a taste game where students tasted chips, candy, and
26 water?

27 A. I forgot.

28 Q. Okay. You forgot if you told the police officer or you

1 forgot if that happened?

2 A. I forgot if that happened.

3 Q. So you are not sure if it happened?

4 A. Um, I'm not sure.

5 Q. Okay. But you're not saying that it didn't happen?

6 A. No.

7 Q. Okay. Do you remember a game where there was a pencil
8 by the door?

9 A. No.

10 Q. You don't remember a guiding game or any type?

11 A. No. I forgot.

12 Q. Okay. And do you remember telling a police officer that
13 the food included chocolate, candy, and Cheetos?

14 A. I think, um, we had to taste some chips and, like,
15 drinks.

16 Q. Okay. What kind of drinks do you remember?

17 A. Um, water and, like, Snapple.

18 Q. Just those two?

19 A. Yes.

20 Q. And what was the Snapple in? That is, could you
21 describe the container for me?

22 A. Um, I forgot.

23 Q. Okay. Can? Cup? Bottle? Do you remember?

24 A. Oh; it was a glass bottle.

25 Q. And was it the kind of bottle that Snapple comes in when
26 you buy it from the store?

27 A. Yes.

28 Q. Okay. Just the shelf bottle from a store; right?

1 A. Yes.

2 Q. And what about the water? Was that in -- what contained
3 the water?

4 A. I think a foam cup.

5 Q. A foam cup?

6 A. Yes.

7 Q. Like a white styrofoam cup?

8 A. Yes.

9 Q. Okay. And the objects that were put in the students'
10 mouths, did they -- were they told -- strike that.

11 Do you remember any food or candy put in your
12 mouth?

13 A. No.

14 Q. But do you remember seeing it in other students' mouths?

15 A. Yes.

16 Q. All right. And when the food was in their mouth, what
17 did they do with the food?

18 A. Um, like, some of them just, like, put it in their mouth
19 and try to guess what it was.

20 Q. But what were they doing with their mouth? Could you
21 see?

22 A. No.

23 Q. Did you see when they were chewing?

24 A. Uh, yes.

25 Q. Were they chewing?

26 A. Yes.

27 Q. Were they licking the candy?

28 A. Uh, yes.

1 Q. Okay. You remember seeing that; right?

2 A. Yes.

3 Q. Okay. And the objects that were put in the students'
4 mouths -- when I say the objects, the candy or the food, who
5 put that in their mouths?

6 A. Um, I forgot.

7 Q. My question is, do you remember if the student put it in
8 their mouth or Mr. Chandler put it in their mouth?

9 A. I think it was -- I think it was Mr. Chandler.

10 Q. Okay. But you're not sure?

11 A. Yes.

12 Q. This happened a long time ago; right?

13 A. Yes.

14 Q. Okay. All right.

15 MR. MADDEN: I have no further questions. Thank
16 you.

17 THE COURT: Thank you.

18 Cross-examination.

19 MS. FILO: Thank you.

20 CROSS-EXAMINATION

21 BY MS. FILO:

22 Q. Hi, Carl. Do you remember any -- what kind of candy was
23 used?

24 A. No.

25 Q. No? You said that you saw students licking something?

26 A. Um, the candy.

27 Q. Like, what kind of thing?

28 A. I think it was, like, a hard candy.

1 Q. Like what?

2 A. I forgot.

3 Q. So was it something that -- I mean, were these little
4 bites of something that the student could put in their mouth?

5 A. Yes.

6 Q. Okay. So you never saw anything that was like the size
7 of a banana?

8 A. No.

9 Q. No? Nothing like that?

10 A. No.

11 Q. Anything that had to go kind of in and out of the
12 student's mouth?

13 A. No.

14 Q. No? Anything where some liquid came out when the
15 student had in their mouth?

16 A. No.

17 Q. No? Okay. That's all I have, Carl. Thank you very
18 much.

19 MR. MADDEN: Thank you.

20 THE COURT: Thank you. You could step down, return
21 to your mother, and you are free to leave the courtroom.
22 Thank you very much.

23 MR. MADDEN: I'll walk you out, Carl.

24 MARCUS DOE,

25 Being called as a witness on behalf of the
26 Defendant, having been first duly sworn, was examined and
27 testified as follows:

28 THE COURT: Good afternoon.

1 THE WITNESS: Good afternoon.

2 THE COURT: What's your name?

3 THE WITNESS: Marcus.

4 THE COURT: Marcus?

5 THE WITNESS: Yes.

6 THE COURT: And, Marcus, do you know -- could you
7 spell your first name for me?

8 THE WITNESS: M-a-r-c-u-s.

9 THE COURT: Okay. Thank you. And, Marcus, how old
10 are you?

11 THE WITNESS: I'm eight.

12 THE COURT: You're eight years old?

13 THE WITNESS: Yes.

14 THE COURT: Okay. Mr. Madden is going to ask you
15 some questions -- just a minute. Ms. Filo will ask you some
16 questions, and I'm going to allow Mr. Madden -- he will
17 explain some of the rules on how to answer questions in the
18 courtroom. Okay?

19 THE WITNESS: Okay.

20 THE COURT: I want to let you know, everyone I have
21 ever seen has come into the courtroom and sat down in that
22 chair, they are very nervous. So if you are nervous, it's
23 okay. All right? And if you need anything, just let me
24 know. Okay?

25 THE WITNESS: Okay. Yes.

26 THE COURT: Okay. You are going to -- your voice
27 is kind of soft. I will ask you to try to speak up so
28 everybody could hear what you have to say, because what you

1 have to say is very important.

2 THE WITNESS: Okay.

3 THE COURT: Okay? Thank you.

4 Direct examination.

5 MR. MADDEN: Thank you, Your Honor.

6 DIRECT EXAMINATION

7 BY MR. MADDEN:

8 Q. Okay. Marcus, could you see me?

9 A. Yes.

10 Q. Good. So I'm going to ask you some questions about when
11 you were in Mr. Chandler's class. But before I do that, I
12 kind of want to go over some rules with you. Okay?

13 A. Yes.

14 Q. All right. So you're doing a good job. You have a very
15 nice voice, but sometimes a little bit soft, so what I want
16 you to do is when you answer speak up if you can. Okay?

17 A. Yes.

18 Q. If I can't hear you, I will tell you to please speak up
19 a little bit. Okay?

20 A. Okay.

21 Q. All right. Okay. If I ask you a question and if the
22 answer to my question is no, I would like you to use the word
23 no. Okay?

24 A. Yes.

25 Q. In other words, I don't want you to shake your head left
26 or right because you mean no. Okay?

27 A. Yes.

28 Q. Could you answer a little louder?

1 A. Yes.

2 Q. Thank you. Then, when we go through with this, when I
3 ask you questions, if your voice gets too low, I'm going to
4 ask you to speak up. And if you don't say yes or you don't
5 say no, I will ask you to do that. Okay?

6 A. Okay.

7 Q. I'm only doing that because -- if I have to do it, it's
8 only because we have to get words out because the lady in
9 front of you, the court reporter, could only get down words.
10 She can't get down shakes of our heads. Okay?

11 A. Okay. Yes.

12 Q. All right. Okay.

13 Marcus, what grade are you in now?

14 A. Um, I was in, um, third grade now. I'm going into
15 fourth grade.

16 Q. You just finished the third grade and you are going into
17 fourth grade; is that right?

18 A. Yes.

19 Q. Thank you. All right.

20 Do you remember who your teacher was in the second
21 grade?

22 A. Um, Mrs. Lippell (phonetic).

23 Q. Did you ever have Mr. Chandler for a teacher?

24 A. Yeah.

25 Q. And do you remember what grade you were in when you were
26 in Mr. Chandler's class?

27 A. Yes.

28 Q. What grade was that?

1 A. Second grade.

2 Q. Okay. Thank you.

3 Do you remember what classroom number Mr. Chandler
4 had when you were in the second grade with him?

5 A. Um, probably don't remember.

6 Q. That's fine. By the way, if I ask you a question and
7 you don't remember, "I don't remember" is the right answer.

8 Okay?

9 A. Okay.

10 Q. Okay. Now, the year that you were in the second grade
11 with Mr. Chandler, were there also third-graders in the
12 class?

13 A. Yes.

14 Q. So it was a combination class? That is, a combination
15 of second-graders and third-graders; right?

16 A. Yes.

17 Q. All right. Since you were in the second grade, you
18 probably sat on the left side of the classroom by the wall
19 that had the sink and the computers; right?

20 A. Um, I forgot, but I think I sat on the left side.

21 Q. Yes. All of the second-graders sat on the left side;
22 right?

23 A. Yes.

24 Q. And all of the third-graders sat on the right side?

25 A. Yes.

26 Q. Okay. Do you remember when you were in Mr. Chandler's
27 class playing a game or games where the students were
28 blindfolded?

1 A. Yes.

2 Q. Were there different types of games when the students
3 were blindfolded?

4 A. Um, I think so, but I only remember one.

5 Q. Well, tell me what one you remember. We'll start with
6 that one.

7 A. I remember one with two people. One was blindfolded and
8 one had to walk across the room with the other one that was
9 helping us.

10 Q. Okay. So that's a game where one of the students was
11 blindfolded; right?

12 A. Yes.

13 Q. And one of the other students in the class had to give
14 him or her directions on where to walk; right?

15 A. Yes.

16 Q. They couldn't see. You had to tell them how many steps
17 to take; right?

18 A. Yes.

19 Q. You had to tell them whether they should step left or
20 step right or step straight ahead; right?

21 A. Yes.

22 Q. You were guiding them; right?

23 A. Yes.

24 Q. They had to depend on the person who doesn't have a
25 blindfold on to help them; right?

26 A. Yes.

27 Q. Is that right?

28 A. (Shakes head up and down.)

1 Q. Yes?

2 A. Yes.

3 Q. Okay. Now, besides that type of blindfold game, do you
4 remember a blindfold game where a student was blindfolded and
5 had to taste things put into his or her mouth?

6 A. Yes.

7 Q. All right. Do you also remember a blindfold game where
8 the student had to feel something either on their -- that was
9 placed against their hand or their foot or their leg?

10 A. Yes.

11 Q. Okay. So we're going to call that first game that you
12 talked about the guiding game. Okay?

13 A. Yes.

14 Q. So you know what I'm talking about?

15 A. Yes.

16 Q. Then -- so let's talk about one of the other games.
17 Let's talk about the feel game. Okay?

18 A. Yes.

19 Q. Do you remember ever playing that game yourself?

20 A. Um, I think so, but I probably forgot.

21 Q. Okay. Fair enough.

22 Do you remember seeing any other children play the
23 feel game?

24 A. Yes.

25 Q. Okay. So when you saw children playing the feel game
26 where they were feeling an object and they were blindfolded,
27 were the children standing up or sitting in a chair or laying
28 on the ground?

1 A. They were, um, standing up.

2 Q. Standing up. Okay. Were they standing up in some
3 particular part of the classroom?

4 A. Um, yes.

5 Q. What part of the classroom do you remember them standing
6 in?

7 A. I think I remember them standing on the right side.

8 Q. Where the third-graders were?

9 A. Yes.

10 Q. Okay. And so were they standing next to a desk or to a
11 table?

12 A. Um, the classroom was cleaned. We moved all of the
13 desks so we could play the game.

14 Q. Okay. I'm sorry. Your voice is getting too low for me
15 to hear, so could you say that again loudly?

16 A. Um, all of the desks were placed in -- like, so it was
17 kind of cleaned out, so they were pushed.

18 Q. So if I understand what you said, the desks were sort of
19 pushed back?

20 A. Yeah.

21 Q. So that the students could kind of be in the middle and
22 do this?

23 A. Yes.

24 Q. Okay. Then, would Mr. Chandler be putting these objects
25 for them to feel against their -- some part of their body?

26 A. Yes.

27 Q. And what parts of their body do you remember Mr.
28 Chandler putting these objects against?

- 1 A. The hand.
- 2 Q. Hands?
- 3 A. And the feet.
- 4 Q. A hand?
- 5 A. Yeah.
- 6 Q. What about their foot or their leg?
- 7 A. Their foot, but I don't remember the leg.
- 8 Q. You don't remember the leg. You remember the hand and
- 9 you remember the foot?
- 10 A. Yes.
- 11 Q. Okay. What kind of objects do you remember -- did you
- 12 see being placed either in their hand or on their hand or on
- 13 their feet? What do you remember seeing?
- 14 A. Um, eraser.
- 15 Q. Eraser? Hang on for a second. I got to catch up with
- 16 you here. Just a minute. Hold that thought.
- 17 Go ahead. What else besides an eraser?
- 18 A. Pencil.
- 19 Q. Pencil. What else?
- 20 A. Um, all -- I just remember eraser and pencil.
- 21 Q. Okay. Do you remember telling a police officer that you
- 22 also saw a paper clip and a piece of paper used?
- 23 A. Yes.
- 24 Q. Does that help you remember?
- 25 A. Yes.
- 26 Q. Okay. And then what happens when the object goes into
- 27 the hand or the hands of the student? What are they supposed
- 28 to do?

1 A. They are supposed to try to figure out what the object
2 is.

3 Q. By just feeling it; right?

4 A. Yes.

5 Q. And did some students guess right and some students not
6 right?

7 A. Yes.

8 Q. Was everybody laughing?

9 A. No.

10 Q. Okay. Was everybody having a good time?

11 A. Yes.

12 Q. Okay. Now, let's move to the taste game that we talked
13 about. When you saw the taste game, when things were put
14 into the mouths of students, were they standing or sitting or
15 laying on the ground, if you remember?

16 A. They were sitting on a chair.

17 Q. Okay. One of the student chairs or Mr. Chandler's
18 chair?

19 A. One of the student chairs.

20 Q. Okay. Was this game sort of played in the same place?
21 Sort of the middle of the classroom?

22 A. Yes.

23 Q. After the desks had been moved back?

24 A. Yes.

25 Q. Okay. And could you remember some of the food that you
26 saw that was placed into the students' mouths?

27 A. Um, like, I sort of forgot.

28 Q. Okay. Do you remember telling a police officer that you

1 saw hot Cheetos, marshmallow, and candy?

2 A. Yes.

3 Q. And does that help you remember?

4 A. Yes.

5 Q. So you did see those types of candy, hot Cheetos,
6 marshmallows?

7 A. Yes.

8 Q. That is not a type of candy -- some other type of candy
9 that you can't remember; is that right?

10 A. Yes.

11 Q. Okay. Then once the food goes into the student's, or
12 the candy goes into the student's mouth, what is the student
13 supposed to do?

14 A. They are supposed to figure out what kind of food it is.

15 Q. Okay. And does Mr. Chandler put the food in their
16 mouth?

17 A. Um, yes.

18 Q. Yes?

19 A. Yes.

20 Q. And is he standing -- where is he standing when he's
21 putting the food in their mouth, if they are seated at their
22 student chair?

23 A. I forgot, but, um, I think I remember him standing up
24 next to the student.

25 Q. Next to the student?

26 A. Yes.

27 Q. Was he to the side of the student or in front of the
28 student?

1 A. The side.

2 Q. Okay.

3 A. I think.

4 Q. Thank you.

5 MR. MADDEN: I have no further questions.

6 THE COURT: Thank you.

7 Cross-examination.

8 MS. FILO: Thank you.

9 CROSS-EXAMINATION

10 BY MS. FILO:

11 Q. Hi, Marcus.

12 A. Hi.

13 Q. Marcus, when you saw Mr. Chandler play the taste game in
14 the classroom, you said that you remember hot Cheetos and
15 marshmallow and candy; right?

16 A. Yes.

17 Q. So everything was something that the student could put
18 in their mouth and chew up and swallow; right?

19 A. Yes.

20 Q. Yeah? You remember anything that was like the size of a
21 banana, like kind of big?

22 A. Um, no.

23 Q. No? Anything that Mr. Chandler had to push in and out
24 of the student's mouth?

25 A. No.

26 Q. No? Anything where gooey stuff came out of the
27 student's mouth?

28 A. No.

1 Q. No? Okay. That is all the questions I have. Thank
2 you, Marcus.

3 THE COURT: Thank you, Marcus. You can step down,
4 go with your mother, and you could leave the courtroom now.

5 MR. MADDEN: Your Honor, this might be a good time
6 for a break.

7 THE COURT: At this time, ladies and gentlemen,
8 we'll take the afternoon recess. We'll call you back in
9 approximately 15 to 20 minutes and we'll begin with the next
10 witness.

11 (Whereupon, a brief recess was taken.)

12 THE COURT: Record will reflect all members of the
13 jury are present, both counsel are present, Mr. Chandler is
14 in the courtroom.

15 Mr. Madden, your next witness.

16 MR. MADDEN: Yes, Your Honor. I will get her.
17 However, I wanted to indicate we'll not be using this
18 witness's last name for purposes of this hearing. We'll
19 refer to her as Annie Doe, D-o-e.

20 THE COURT: Ms. Filo?

21 MS. FILO: That's fine.

22 THE COURT: You agree to that?

23 MS. FILO: Yes.

24 THE COURT: Annie.

25 MR. MADDEN: I'll be right back, Your Honor.

26 ANNIE DOE,

27 Being called as a witness on behalf of the
28 Defendant, having been first duly sworn, was examined and

1 testified as follows:

2 MR. MADDEN: Why don't you sit down. I'm going to
3 adjust the microphone. If you could maybe scoot forward a
4 little bit. Would you like some water? All right. So,
5 thank you very much. Just try to keep your voice up and I'll
6 help you if you don't. Okay?

7 THE WITNESS: Thank you.

8 THE COURT: Good afternoon. Could you state your
9 name for the record, please?

10 MR. MADDEN: Please tell her just her first name,
11 Your Honor.

12 THE WITNESS: Annie.

13 THE COURT: Annie? And would you spell it, Annie?

14 THE WITNESS: A-n-n-i-e.

15 THE COURT: Thank you. The attorneys have agreed
16 that we'll just use your first name for the purposes of this
17 hearing. Okay?

18 THE WITNESS: Yes.

19 THE COURT: So you are okay with them referring to
20 you by your first name?

21 THE WITNESS: Yes.

22 THE COURT: Now, as you know, the lawyers are going
23 to be asking some questions. It's important that you let
24 them finish the question before you begin your answer.

25 THE WITNESS: Yes.

26 THE COURT: And that's the next thing. If the
27 question calls for a yes or no response, we need to have you
28 say yes or no as opposed to nodding your head up and down to

1 mean yes.

2 THE WITNESS: Yes.

3 THE COURT: Listen to the question carefully and
4 just answer what is being asked. If you hear one of the
5 lawyers say objection, don't answer the question. I will
6 rule. And if I overrule the objection, I'll say you could
7 answer it. If I sustain the objection, I will tell you the
8 lawyers are going to ask you another question. Okay?

9 THE WITNESS: Yes.

10 THE COURT: Thank you.

11 We'll begin with direct examination, Mr. Madden.

12 MR. MADDEN: Thank you, Your Honor.

13 DIRECT EXAMINATION

14 BY MR. MADDEN:

15 Q. Annie, again, my name is Mr. Madden. I'm Mr. Chandler's
16 attorney. I want to review some rules about testifying. I
17 don't think you have ever been in a courtroom before, have
18 you?

19 A. No.

20 Q. So everyone who comes into the courtroom is a witness
21 and never been here before is always nervous?

22 A. Yes.

23 Q. All right. That's normal and that's okay. So I'm going
24 to ask you some questions, and there is certain rules that we
25 have in a courtroom that I want you to try to obey. Okay?

26 A. Yes.

27 Q. And the main ones are -- they are simple. If I ask you
28 a question and the answer is yes, please answer out loud

1 using the word yes. Okay?

2 A. Yes.

3 Q. In other words, if the answer is yes, but you only shake
4 your head up and down, that's not good in a courtroom. Okay?

5 A. Yes.

6 Q. It's not good because the lady in front of you, the
7 court reporter, could only get down words. She can't get
8 down gestures or shakes or movements. Okay?

9 A. Yes.

10 Q. Okay. Also, English is not your first language, is it?

11 A. Yes -- no. Sorry. English is not my language.

12 Q. You understand it well enough to answer my questions;
13 right?

14 A. Yes.

15 Q. But if one of my questions -- if in my questioning I ask
16 you a question that you don't understand any of the words
17 that I'm using, or you don't understand my question, please
18 just stop me and tell me you don't understand and I'll ask
19 the question in a different way so that you can understand
20 it. Okay?

21 A. I will.

22 Q. I don't want you to answer any question that you don't
23 understand.

24 A. Okay.

25 Q. So if you answer a question of mine and you don't say
26 anything, I'm going to assume that you understood the
27 question. Okay?

28 A. Okay.

1 Q. All right.

2 And then finally, I want to say this, I know this
3 is awkward for you, all right, and it's difficult, so -- but
4 it is necessary. And I'll need you to answer my questions as
5 best you can. Okay?

6 A. Yes.

7 Q. All right. Okay.

8 So, Annie, you know Craig Chandler; correct?

9 A. Yes.

10 Q. And do you remember when you first met Craig Chandler?

11 A. Yes.

12 Q. When did you first meet Craig Chandler?

13 A. At O.B. Whaley School.

14 Q. Was he a teacher there then?

15 A. He was my daughter's teacher.

16 Q. Okay. And what grade was your daughter in at that time?

17 A. She was in the third grade.

18 Q. So this would have been the school year 2010 and 2011?

19 A. I don't remember.

20 Q. Okay. But she was in the third grade then; right?

21 A. Yes.

22 Q. And Mr. Chandler's class that year was a straight third
23 grade class?

24 A. Um, yes.

25 Q. Okay. So Mr. Chandler was your daughter's third grade
26 teacher?

27 A. Yes.

28 Q. At O.B. Whaley School?

1 A. Yes.

2 Q. All right. And that school year, did you go to
3 back-to-school night?

4 A. Yep.

5 Q. And did you meet Mr. Chandler at back-to-school night?

6 A. Yes. That was the first time I met him.

7 Q. Okay. So you had a pleasant conversation with him?

8 A. Yeah. I didn't remember, but I just -- I didn't
9 remember that much.

10 Q. Okay. Fine. But sometime after that, you started
11 communicating with Mr. Chandler; right?

12 A. Yeah, he asked my phone number.

13 Q. All right. And so you started having conversations --
14 phone conversations with him?

15 A. Yeah.

16 Q. And were these phone conversations live phone
17 conversations or were those text conversations?

18 A. I did not remember that well.

19 Q. It was one or the other or both?

20 A. Yes.

21 Q. And would it be fair to state that you and he both
22 struck up a relationship?

23 A. Uh, we didn't go there yet. We just -- he asked me out
24 for a date.

25 Q. Okay.

26 A. I think I remember that day, after the first day meeting
27 him, and he asked my daughter -- he asked my daughter give
28 the phone number to him and then we were meeting somehow. I

1 don't know where, but I remember in school, in class, and --

2 Q. Okay. Let me stop you there.

3 So you went to back-to-school night, you met him,
4 and then sometime after that he called you; right?

5 A. Yeah. I don't -- I could not remember everything. I
6 don't know he called me or text me or talking on the phone or
7 something like that. I do not remember, but I remember after
8 that, we met one time in the class or somehow --

9 Q. Well --

10 A. -- we were talking.

11 Q. We'll get to that. So at some point during the year he
12 asked you out; correct?

13 A. That's correct.

14 Q. On a date?

15 A. Yes.

16 Q. And you went with him?

17 A. I went with him because he seemed like going into a
18 serious relationship because he separate and I was single.
19 So --

20 Q. So you liked him, he appeared to like you, and sooner or
21 later he asked you out; right?

22 A. Yes.

23 Q. And as time went by, from the time that you first met
24 him until the time that he asked you out, your relationship
25 was growing and you thought it might grow into something
26 important?

27 A. Yes.

28 Q. Okay.

1 A. I thought going to be serious.

2 Q. You thought that the relationship would become serious?

3 A. Yeah.

4 Q. Do you know how long it was approximately from the time
5 that you first met him until you went out on the date?

6 A. Um, I could not remember. It's too long ago.

7 Q. Was it a matter of days or weeks or months?

8 A. I think weeks.

9 Q. Weeks?

10 A. Like --

11 Q. Okay. In the weeks that followed?

12 A. No. I think it's more than a week. Like, about a
13 month.

14 Q. About a month.

15 From the time that you met him until the time you
16 went out about a month later with him, how many times do you
17 think that you called each other and either spoke or text
18 over the phone?

19 A. I did not remember that well.

20 Q. Lots?

21 A. I do not remember. I'm sorry.

22 Q. That's okay. But in any event, by the time he asked you
23 out, you thought the relationship was getting more serious?

24 A. Yeah.

25 Q. You liked him?

26 A. Uh, and then he showing that he -- he was showing that
27 he liked me too.

28 Q. Exactly. Just -- okay.

1 A. And I think that -- that's my thinking. I was thinking
2 that he's the teacher and of course he not going to be doing
3 something bad to me.

4 Q. Sure.

5 A. Because I trusted teacher.

6 Q. Okay. All right.

7 Now -- so you went out. Do you remember where you
8 went out on your date?

9 A. In Mountain View.

10 Q. Mountain View?

11 A. On Castro Street in Mountain View or something.

12 Q. Castro Street?

13 A. Yeah. I don't know the street or avenue.

14 Q. That's the main restaurant business street in Mountain
15 View?

16 A. And then it was a sushi restaurant.

17 Q. You went to a sushi restaurant?

18 A. Yeah.

19 Q. Okay. Did he pick you up at your home?

20 A. Yeah. He brought flower over.

21 Q. He brought flowers?

22 A. And he picked me up at my home and then we went there.

23 Q. Okay. So you had a nice dinner?

24 A. Yeah, it was nice dinner.

25 Q. And you had a pleasant conversation?

26 A. Yes, and I like him a lot.

27 Q. And he appeared to like you a lot?

28 A. Yeah.

1 Q. And so did he take you back home?

2 A. He did.

3 Q. And did he go into your house with you?

4 A. Yes.

5 Q. And did he stay the night with you?

6 A. He stayed until 3:00; 2:30 or 3:00 o'clock in the
7 morning.

8 Q. Okay.

9 A. And he left.

10 Q. Okay. Hang on. And would it be fair to state that you
11 essentially had sexual relations with him that night?

12 A. Um, we kissing, but we not really perform.

13 Q. All right. Did you both have your clothes off?

14 A. Yeah. We kissing, but we did not perform.

15 Q. All right. And he was in your bed with you?

16 A. Yeah. I watching movie with him.

17 Q. Okay. All right.

18 And then after that, did you continue to have
19 communication with Mr. Chandler?

20 A. I did texting him, calling him, but he did not respond
21 to me, and I was upset. I say -- I asked him what's going
22 on, but he didn't answer me. He didn't text me or call me
23 back and he just -- I don't know if he tell me the truth or
24 he not telling me the truth. He never answered me back, or
25 if he answers, it just really wasn't nice answer back. So I
26 don't know.

27 Q. Okay.

28 A. And I feel like he used me after that.

1 Q. Okay. Now, at some point you went down and had a
2 conference with Mr. Chandler? Parent/teacher conference;
3 right?

4 A. Yes.

5 Q. Was that conference in the classroom at O.B. Whaley?

6 A. Yes.

7 Q. And do you remember approximately how long it was from
8 the time that you had dinner with Mr. Chandler and he came
9 back to your house until the parent/teacher conference?

10 A. It's a while. It's a long time. It's like more than
11 six months.

12 Q. More than six months.

13 Do you remember -- when you went to the teacher
14 conference, do you remember what time your conference was?

15 A. That's about 6:00 o'clock.

16 Q. Okay. 6:00 p.m.?

17 A. Yeah.

18 Q. Was it dark outside or was it light?

19 A. It was -- the sunset was down. It's not too dark. It
20 just not too dark completely.

21 Q. Okay. And was it your understanding that you were the
22 last parent/teacher conference scheduled in his room that
23 night?

24 A. No.

25 Q. You don't know?

26 A. I did not know.

27 Q. Okay.

28 A. Sorry. He told me after that. Like, oh, you know, he

1 wanted me to be the last person, but I did not know.

2 Q. He told you he wanted you to be the last person?

3 A. He told me after I get into the room.

4 Q. Okay. Now, do you remember -- well, strike that. Let
5 me ask another question.

6 Did you have a conference with Mr. Chandler about
7 school and your daughter?

8 A. Um, I went in. We just say a couple of words.

9 Q. About your daughter?

10 A. Yeah.

11 Q. About school?

12 A. Yeah, not a lot.

13 Q. Okay. Now, when you went, you went by yourself; right?

14 A. Of course I go -- went by myself. I wanted my kid -- I
15 want to know how she's doing.

16 Q. Sure. But the point is, it was just you and Mr.
17 Chandler in the room?

18 A. Yes, and the dog.

19 Q. Whose dog?

20 A. And the little dog. I don't know whose dog it is.

21 Q. There was a dog in the classroom?

22 A. Yes.

23 Q. Wasn't your dog?

24 A. No.

25 Q. Do you have a dog?

26 A. Back then I did not have a dog.

27 Q. Okay. So I take it that when you went into the
28 classroom, you sat down with Mr. Chandler briefly to talk

1 about your daughter?

2 A. Yes.

3 Q. Okay.

4 A. But I did not remember clearly.

5 Q. That's all right. Well, we're going to take a step at a
6 time. And if you don't remember any parts of it, you tell
7 me. But I want to make sure that if the truth is you don't
8 remember, just say that, but I don't want you to tell me "I
9 don't remember" if it's only because it's too difficult to
10 remember. Do you understand what I mean?

11 A. Yes.

12 Q. Okay. I know this is hard. Okay?

13 A. Yes.

14 Q. So you sat down; correct?

15 A. Yes, at the corner.

16 Q. We'll get to that in a minute.

17 And was Mr. Chandler sitting down?

18 A. Yes.

19 Q. And can you -- it's a classroom; right? Or, it was a
20 classroom?

21 A. It was a classroom.

22 Q. So there were desks and little desks because these are
23 third-graders with little chairs; right?

24 A. Yes.

25 Q. Children chairs and children desks?

26 A. Yes.

27 Q. But were there two adult size chairs for you and Mr.
28 Chandler to sit in?

1 A. No.

2 Q. You didn't sit in an adult size chair?

3 A. No.

4 Q. What did you sit in?

5 A. I sit on the student chair.

6 Q. Okay. And where was Mr. Chandler sitting?

7 A. He sit -- he was sitting across from me right at the
8 corner, close to the corner of the classroom inside -- like,
9 for example, the door in here and I sit right -- corner right
10 there.

11 Q. Okay. That's -- this is -- I'm going to go up and show
12 you some pictures and have you point to things, and I think
13 that will be more helpful. Okay?

14 A. Yes.

15 Q. So I'm going to first point to what has been marked
16 Defense Exhibit A-2. This is a big blow-up photo, and that
17 appears to be a photograph of Mr. Chandler's classroom in one
18 corner where his desk was; right?

19 A. Yes.

20 Q. You recognize that? Just answer me if you recognize
21 that?

22 A. I recognize that.

23 Q. Then I'm going to show you another photograph, and this
24 photograph has been marked Defense A-1. And do you recognize
25 this photograph?

26 A. No.

27 Q. All right. When --

28 A. But it wasn't this one over there. I did not recognize

1 that one, the corner over there.

2 Q. Hang on. Do you understand this to be Mr. Chandler's
3 classroom? You can't tell?

4 A. (Shakes head side to side.)

5 Q. Okay. So when you walked into Mr. Chandler's classroom,
6 there is a classroom door; right?

7 A. Yeah.

8 Q. Was the door open or closed when you walked into the
9 teacher conference?

10 A. The door is closed.

11 Q. The door --

12 A. After that, after I walked in.

13 Q. No. Before you went in, do you walk through an open
14 door or do you knock and go through a closed door?

15 A. I did not remember.

16 Q. That's fine. So when you went through the door, would
17 you have seen the view from Photograph A-1, Defense Exhibit
18 A-1, you would look straight across and see his desk and then
19 the inside door. Is that what you saw?

20 A. No. It's different than I see it, because it was the
21 student chair like that one, right there around me.

22 Q. You're pointing to the chair -- the black chair or the
23 blue chair?

24 A. Yeah.

25 Q. In --

26 A. Around me a lot with the table and stuff. I just
27 remember that it was a chair right here, and the table, chair
28 and the table right here is around me.

1 Q. All right. Hang on. Let me see if I could help you.
2 One of the problems, I think the table you are talking about
3 we really don't have a photograph of it, but we do have a
4 diagram.

5 MS. FILO: Objection, Your Honor. Leading.

6 THE COURT: Sustained.

7 BY MR. MADDEN:

8 Q. All right. Do you remember a table that was kind of a
9 U-shaped table?

10 A. The U-shaped table was on the other side.

11 Q. The other side of what?

12 A. The corner, the other corner, the opposite corner.

13 Q. All right. Do you remember seeing a sink or any wall
14 with computers?

15 A. I did not remember.

16 Q. Do you remember seeing a wall across the front that had
17 white boards? You know, blackboards that were white?

18 A. It was like this size.

19 Q. When you walked in, it was off to your left?

20 A. On my left, and I sit right on that corner on the right.

21 Q. Okay. So if I understand your testimony, when you
22 walked into the classroom, the white board -- white boards
23 across the wall would have been off to your left?

24 A. Yeah.

25 Q. And that would have been the front of the class; right?

26 A. Yes.

27 Q. So the door into the class basically came into the back
28 of the class; right? Or the far back end of the class?

1 A. I go all the way in and I did not -- it's just --

2 Q. Hang on for a second.

3 MS. FILO: Objection, Your Honor. May we approach?

4 THE COURT: Yes.

5 (Whereupon, there was a discussion at the bench.)

6 BY MR. MADDEN:

7 Q. So I'm going to continue to ask you some questions, but
8 I'm not going to ask you about the photographs. All right?

9 A. Yes.

10 Q. Okay. So you sat down in a chair, Mr. Chandler was
11 sitting in a chair, I take it you were close to each other?

12 A. Across, face-to-face to each other.

13 Q. And how far was the chair Mr. Chandler was in from your
14 chair? I mean, what would you say the distance was?

15 A. Beginning, it was a little distance, and then later on,
16 he scoot his chair over to me.

17 Q. Scooted his chair over?

18 A. Yeah.

19 Q. Okay. And when he scooted his chair over, how close was
20 his chair to your chair?

21 A. I think it's face-to-face like this. Like, my knees and
22 his knees touching.

23 Q. It was close enough for your knees to actually be
24 touching?

25 A. Yes.

26 Q. Okay. So you had a conversation about your daughter;
27 right?

28 A. Very short. It -- it was short.

1 Q. And then Mr. Chandler and you began physically touching
2 each other?

3 MS. FILO: Objection, Your Honor. That's leading.

4 THE COURT: Sustained.

5 BY MR. MADDEN:

6 Q. What's next thing that happened?

7 A. It's -- it was -- he was kissing me.

8 Q. Okay.

9 A. But I didn't like it, but I just -- and then somebody
10 was knocking on the door on the back of the classroom, and I
11 asked him who is this, and it was a janitor.

12 Q. All right. Then what did Mr. Chandler do?

13 A. He did not open the door or nothing.

14 Q. Okay. And then what happened?

15 A. And then he tried to, you know, touch me and kissing me,
16 and then, you know, I think I feel uncomfortable because
17 my -- that's my daughter classroom.

18 Q. Right.

19 A. It wasn't a good idea to do like -- or something like
20 that. It's not good, you know, for my culture or myself.

21 Q. Okay. So would it be a fair statement that soon after
22 that, you had sexual intercourse with Mr. Chandler?

23 MS. FILO: Objection, Your Honor. Leading.

24 THE COURT: Sustained.

25 BY MR. MADDEN:

26 Q. Did you have sexual intercourse with Mr. Chandler?

27 A. I did not want to.

28 Q. My question is, did you have sexual intercourse with Mr.

1 Chandler in the classroom?

2 MS. FILO: Objection, Your Honor. Leading.

3 THE COURT: Sustained.

4 BY MR. MADDEN:

5 Q. Tell me what happened next.

6 A. He kissed me and he tried to pull my pants down.

7 Q. Okay.

8 A. I never was -- it's winter. I was wearing leggings.

9 Q. Leggings?

10 A. Yes.

11 Q. Okay.

12 A. It's easy to pull down.

13 Q. Okay.

14 A. And he tried to kiss me and he tried to pull down. I
15 didn't want it because my kid classroom and how long I didn't
16 see him. It's been four months --

17 Q. All right.

18 A. -- I did not see him.

19 Q. Did you have sex with Mr. Chandler?

20 A. And then after that.

21 Q. You did?

22 A. No. After that, he turned me over.

23 Q. On what?

24 A. He just turned me around.

25 Q. All right. And where was the top part of your body?
26 Was that on something or against something?

27 A. No, not against something. He turned me over. My pant
28 already down because it was leggings.

1 Q. Okay.

2 A. And he just push his thing in there, and within a
3 minute -- I don't know what the hell he did -- fast, and
4 he --

5 Q. Okay. So you had sexual intercourse?

6 A. He came, yeah, but I did not like it.

7 Q. Okay. All I'm trying to establish is the fact that you
8 had intercourse. Okay?

9 A. It's correct.

10 Q. Okay. Then did you leave the classroom?

11 A. I left immediately, but I wasn't happy. I was crying
12 when I got home.

13 Q. When you got home?

14 A. When I waking home.

15 Q. All right. But were you crying in the classroom?

16 A. No. I just leave.

17 Q. Okay. And did you leave by yourself?

18 A. Yes.

19 Q. All right. Did you have communication with Mr. Chandler
20 any time after that?

21 A. He text me again next day.

22 Q. And did you text him back?

23 A. No.

24 Q. Did you ever talk to him after that?

25 A. Because I did not like it. I feel like -- he just
26 considered not -- if you -- sorry.

27 Q. Okay. Now --

28 MS. FILO: Objection, Your Honor. Has the witness

1 finished her statement -- her answer?

2 THE COURT: Were you done? You could finish your
3 answer.

4 THE WITNESS: Sorry. Just let me --

5 MS. FILO: That's okay.

6 BY MR. MADDEN:

7 Q. Would you like either a cup of water or a tissue?

8 A. I'm okay.

9 Q. Okay.

10 THE COURT: Were you done with your answer, ma'am?

11 THE WITNESS: I -- when I was walking home, I
12 cried. And next day he text me and he say how pleasure he
13 was with me, but I did not text him back. And he got mad at
14 me and he text me, and I said I'm busy because I didn't want
15 to talk to him.

16 MR. MADDEN: Okay. All right. Thank you. I have
17 no further questions at this time.

18 THE COURT: Cross-examination, Ms. Filo.

19 MS. FILO: Thank you.

20 CROSS-EXAMINATION

21 BY MS. FILO:

22 Q. Hi, Annie. I have a couple of questions for you. Okay?

23 You said that you met Mr. Chandler at
24 back-to-school night; is that right?

25 A. That's correct.

26 Q. Okay. How did Mr. Chandler get your phone number?

27 A. I think he asked my daughter.

28 Q. Okay.

1 MR. MADDEN: Objection. Speculation.

2 THE COURT: Sustained. I will strike the answer.

3 BY MS. FILO:

4 Q. Did you give him your phone number?

5 A. And then I gave him the number to my daughter and give
6 to him.

7 Q. Okay. So that was at back-to-school night; right?

8 A. That's correct.

9 Q. Okay. That happens right after your daughter got
10 assigned to the classroom; right?

11 A. Yes.

12 Q. When you -- when you first started talking to him, did
13 you tell Mr. Chandler that you were a single mom?

14 A. I did.

15 Q. So you're raising your daughter by yourself?

16 A. Yes. I have her as a custody full time.

17 Q. Okay. And what did Mr. Chandler tell you about his
18 marriage?

19 A. He say he -- he's single. He was single. He told me
20 that he's single. He just separated with his wife, and the
21 kid, it was just two-year-old child. He has a child.

22 Q. So he told you that he was a single parent too?

23 A. That's correct.

24 Q. And you trusted him?

25 A. I trusted him as the teacher and as a parent.

26 Q. So you said that you either talked on the phone or
27 texted for about a month?

28 A. I'm not really remember that much. It's around that,

1 about a month.

2 Q. Okay. What sort of things would you talk about?

3 A. I do not remember.

4 Q. But there was nothing about those conversations that
5 made you suspicious in any way?

6 A. No.

7 Q. No? You thought he was actually interested in you?

8 A. Exactly.

9 Q. Okay. You went on a date with him to this sushi
10 restaurant?

11 A. Yes.

12 Q. And you said you came back to your house?

13 A. Yes.

14 Q. You said that you were in your bedroom; is that right?

15 A. Watching movie.

16 Q. So, Annie, I don't want to embarrass you, but I need to
17 ask you some questions about that. All right?

18 A. Yes.

19 Q. You were kissing?

20 A. Yes.

21 Q. Did you have your clothes on or were you naked?

22 A. In the beginning, of course, I had my clothes on, but
23 when you kissing and then it just -- I'm -- so both of us
24 have clothes off.

25 Q. But then you said you did not perform?

26 A. None of us perform because I did not know what happened.
27 But we did not have sex that night.

28 Q. Did you try to have sex that night?

1 A. I think we kissing, but -- naturally, but I don't know.
2 I did not see us having sex because I have -- I don't know.
3 We tried, or we did try, but it's just not really happen. I
4 don't know if we try or not trying, but we kissing naturally,
5 so --

6 Q. Okay. So maybe I'm not understanding. What wasn't
7 happening?

8 A. Sex. We not -- we did not perform.

9 Q. How come?

10 A. He was sweating and he was shaking. He was nervous.
11 That's it.

12 Q. Okay. Did you -- was he trying to have sex with you?

13 A. I saw him, he was nervous more than trying to have sex.

14 Q. Okay.

15 A. He was sweating and he just -- something is not normal.

16 Q. So he was kind of sweating and shaking?

17 A. Not shaking. Nervous.

18 Q. Nervous. Okay.

19 So can you tell me what stopped you from having sex
20 that night?

21 A. That's it.

22 Q. Okay. You've said in the past, have you not, that Mr.
23 Chandler could not get erect; is that right?

24 A. That night, I don't know. He's nervous or something.

25 Q. Okay. But --

26 A. That's why he could not. I have -- yeah, he could not.
27 I don't know how he nervous, so --

28 Q. Okay. Couldn't get hard; right?

1 A. Yeah.

2 Q. All right. I want to make sure that I'm understanding
3 correctly.

4 A. Yes.

5 Q. Okay. So you did not have sexual intercourse that
6 night?

7 A. (Shakes head side to side.)

8 Q. But you were a willing participant; is that right?

9 A. That's correct, because I think he's serious and I'm
10 serious and I think we are going to have future together.

11 Q. Okay. So, Annie, you said after that, you would text
12 him or call him and you got no response; right?

13 A. One time or two times he respond with me, but it wasn't
14 the nice response. He say he was with his mom and something.
15 I just tried to text him and call him because I thought,
16 like, we're more than friends or whatever, you know, so
17 that's why I tried to call and then -- do you want to see
18 more often.

19 Q. So at some point you get the message; right? You get
20 the hint that he's disappeared, he's not --

21 A. Yeah, he disappeared.

22 Q. He's not going to be a serious person in your life?

23 A. And then I feel like he used me.

24 Q. Were you upset about that?

25 A. I was upset about that in the beginning because I think
26 it's just, like, why you disappear after that day? You talk
27 for a month, we met each other, we excited to each other, and
28 he was a single parent, I am a single parent. I thought I

1 have a -- I'm going to have a date and a boyfriend. I don't
2 want to play around.

3 Q. Okay. He had told you at the time that he was single?

4 A. Yes.

5 Q. Okay. Annie, when you got the notice for parent/teacher
6 conference, how did that happen? Is it by e-mail or a
7 letter? How did you find out that?

8 A. I think by letter.

9 Q. Okay. Was a time assigned to you?

10 A. I think every parent needs to do the parent conference.

11 Q. Okay. But I'm saying, did you get to pick the time or
12 was the time assigned?

13 A. Because I get out of work by 5, 5:30, so I have to
14 assign the time, or, you know, mostly the teacher very
15 flexible hours with me after my work.

16 Q. Okay.

17 A. And then he give me last call.

18 Q. Okay. So you came to the parent/teacher conference and
19 you said that the door when you got there -- is the door
20 closed or open? I don't remember what you said?

21 A. I do not remember.

22 Q. Okay. When you came into the classroom, then what
23 happened to the door?

24 A. The door was shut. The door is shut.

25 Q. Who shut it?

26 A. Mr. Chandler.

27 Q. Okay. Did he use a key or anything with the door?

28 A. I did not remember, and I don't know how the system of

1 the door in the school -- the classroom.

2 Q. Okay. So, Annie, I'm going to ask you to do me a favor.
3 Okay?

4 A. Yes.

5 MS. FILO: Your Honor, may I approach?

6 THE COURT: Yes. Thank you.

7 BY MS. FILO:

8 Q. Okay. Annie, so I've just drawn -- very poorly, but
9 I've just drawn a little diagram. Okay? And I think when
10 you said that you came into Mr. Chandler's classroom, if you
11 look to the left, there was the white board up at the front
12 of the class; right?

13 A. That's correct.

14 Q. Okay. Annie, could you just -- could you tell me where
15 it was that you met with Mr. Chandler? Where was your
16 conference?

17 A. It's right on the corner of the right side, like that,
18 on your right side.

19 Q. Here or here?

20 A. No. It's right there. It's right there.

21 Q. How about this? I'm going to give you -- can I give you
22 a pen and ask you to tell me right where you were?

23 A. It's right here.

24 MS. FILO: Your Honor, the witness has put a circle
25 there.

26 BY MS. FILO:

27 Q. Annie, what was in that circle? What -- you said you
28 were sitting at a student's chair?

- 1 A. It's correct.
- 2 Q. And what else was there?
- 3 A. It's the table of the children and the chair around me.
- 4 That's what I remember.
- 5 Q. Say it one more time. A table --
- 6 A. The tables, student tables and chairs.
- 7 Q. Okay. And --
- 8 A. And a dog.
- 9 Q. Okay. So students -- like student desks?
- 10 A. Student desk.
- 11 Q. Okay. So in Defense A-2, in this left-hand corner there
- 12 is a student desk; right?
- 13 A. Exactly.
- 14 Q. And that's what you were sitting at?
- 15 A. Yes.
- 16 Q. Was it your daughter's desk or was it another desk?
- 17 A. I did not know who the desk it is.
- 18 Q. You said that Mr. Chandler was sitting across from you?
- 19 A. Yeah, face-to-face like that.
- 20 Q. So he was sitting on the other side of the desk?
- 21 A. Yes.
- 22 Q. Okay. And you said you talked very briefly about your
- 23 daughter; right?
- 24 A. Yes.
- 25 Q. Okay. So how did Mr. Chandler -- you said that then he
- 26 kissed you. Yes?
- 27 A. Yes.
- 28 Q. How did that happen?

1 A. I don't know how it happened, but we were talking and
2 then he wrapped the hand on me and then he kissing me. And
3 then I heard the janitor, or something, try to open the door.
4 I said: No, janitor. I didn't want it because it was in my
5 daughter's classroom.

6 Q. So you said that he -- what you did is, you put your arm
7 out and around like in a semicircle. Yes?

8 A. Yes.

9 Q. So was he still across this table from you?

10 A. Not the table. It's just the two chairs, the two
11 chairs, but the table behind us.

12 Q. So he was on -- I think you started to say -- you
13 originally said he was across a desk from you; right?

14 A. No desk in between.

15 Q. You were just sitting across from each other?

16 A. Yes.

17 Q. But not --

18 A. No desk in between.

19 Q. He was just right across from you?

20 A. Yeah.

21 Q. Okay. When he put his arm around -- you said he put his
22 arm around you?

23 A. Yeah.

24 Q. And he kissed you?

25 A. (Shakes head up and down.)

26 Q. Were you sitting down or standing up?

27 A. I was sitting down.

28 Q. Okay. And did you say anything to him about that?

1 A. I just got nervous because it's, like, long time I
2 didn't see him and then it just happened like that. I didn't
3 like it and in the bathroom -- in the classroom. Sorry.

4 Q. So did you say anything to him?

5 A. I say just like: Oh, the janitor, so -- and then I
6 just -- I -- and then I said: No. Janitor are going to
7 come. And he said don't worry. He locked the door.

8 Q. Okay.

9 A. He can't get in.

10 Q. What happened after that?

11 A. And then I stand up.

12 Q. Why did you stand up?

13 A. Because I didn't want it.

14 Q. Were you planning to leave?

15 A. No. I just didn't want it. And then just he hug around
16 me and then he kissed me and he pulled my pants down.

17 Q. Did you say anything to him?

18 A. I said no. Just the janitor -- I just said the janitor
19 come, you know, I just -- I just say that.

20 Q. Okay. So, Annie, what I'm trying to figure out is, did
21 you ever tell Mr. Chandler: No, I don't want to do this.
22 This is my daughter's classroom, I don't like this?

23 A. I said no, that's it, but the janitor here. And he
24 said: Don't worry. I lock the door. I just say that.

25 Q. Okay. Did you ever say to him: I don't want to do
26 this?

27 A. I did not remember.

28 Q. Okay. So --

1 A. But I just know that I told him that: No. The janitor
2 is here. And it's a lot of time. It's not one time. I
3 mean, I didn't want it.

4 Q. Okay. I understand you didn't want it. I'm just trying
5 to figure out if you ever said that to him?

6 A. I do not remember. No.

7 Q. Okay. And then you said he turned you around; is that
8 right?

9 A. He kissed me and then I tried to turn around and then it
10 just -- I tried to get away and then -- I don't know. It
11 just --

12 Q. What did you mean you tried to get away?

13 A. I don't want it. I don't want him to kiss me. He
14 kissed me everywhere.

15 Q. Okay.

16 A. I didn't want it.

17 Q. You said you tried to get away?

18 A. I'm not fighting all that, but I just tried to, like --
19 and then he just turned me around.

20 Q. Okay. So he turned you around and then what happened?

21 A. I didn't know that his pants is -- I don't know
22 when -- I don't remember. It's just --

23 Q. Okay. You said that he put his penis inside your
24 vagina; right?

25 A. Yes, within a minute.

26 Q. All right. Within a minute. So this didn't seem very
27 nice to you?

28 A. (Shakes head side to side.)

1 Q. Yes or no?

2 A. It's not nice.

3 Q. Okay. And did Mr. Chandler ejaculate?

4 A. Within a minute, very fast.

5 Q. No condom was used; is that right?

6 A. Yes.

7 Q. Correct?

8 A. Yes.

9 Q. So, Annie, I have to ask this question. Did he
10 ejaculate inside your vagina?

11 A. Yes.

12 Q. Okay. So was there -- did he ejaculate any place else
13 that you could see?

14 A. (Shakes head side to side.)

15 Q. All inside you?

16 A. Yep. I could not see because it just -- when I was
17 walking home, it's all wet.

18 Q. Okay. Annie, you have -- when you said you were walking
19 home, you were crying?

20 A. Yes, because I did not like it.

21 Q. Okay. Did you --

22 A. I asked him that: How many woman you did in this
23 classroom?

24 Q. Because that's what it felt like to you?

25 A. Yes.

26 Q. Not something --

27 A. I asked him after that.

28 Q. Were you upset?

1 A. I did.

2 Q. Why? Tell me why you were upset.

3 A. Because I feel like he disrespect me.

4 Q. You said you cried on the way home?

5 A. Um-hum.

6 Q. Yes?

7 A. (Shakes head up and down.)

8 Q. And did you tell anybody about this?

9 A. No.

10 Q. No?

11 A. It's not a good thing to tell everyone.

12 Q. Okay. So, Annie, you brought your daughter in January
13 of 2012 to be interviewed by some police officers; right?

14 A. It's correct.

15 Q. And you told the officer that -- one of the officers
16 that was there while your daughter was being interviewed that
17 you were raped?

18 A. I feel like that. That's what I felt because I don't
19 like the way he did that to me. I didn't see him for six
20 months later, he disappear more than six months, and he came
21 to me just like that? How you think -- how you think that
22 person? I'm not. I have my job. I'm working. I'm not
23 waiting for someone to do that to me.

24 Q. Okay.

25 A. Would you mind to do that -- for someone that you trust
26 and then disappear and then just do it again to you? It's
27 just not -- it's disrespect, and plus in my kid's room, my
28 kid's classroom?

1 Q. Okay.

2 A. I don't go around and do that.

3 Q. I understand. So --

4 A. I feel like that, that's why I crying. But during that
5 time, I start dating with someone. I started dating, but we
6 are not going anywhere yet.

7 Q. Okay. So, Annie, I have to just be clear, you told him:
8 No. The janitor's coming --

9 A. Yes.

10 Q. -- right? And you tried to get up; right?

11 A. Yes, and he pulled my pants down.

12 Q. And did you -- I thought you said on direct that you
13 tried to pull your pants back up?

14 A. Yeah, because it was legging, it was legging, I could
15 not pull it up.

16 Q. Okay. So --

17 A. It was legging.

18 Q. Why did you try to pull your pants back up?

19 A. Because he pulled my pants down.

20 Q. You didn't want them down?

21 A. Exactly.

22 Q. So you tried to pull them back up?

23 A. Yes.

24 Q. And then what happened? That's when he turned you
25 around?

26 A. Yeah -- no. That's when he tried to kiss me.

27 Q. Okay. When he was kissing you, did you ever push him
28 away and say no?

1 A. I just said: No. This is janitor. But I don't -- I
2 can't scream so people hear me that I was in the room because
3 both my children in that school. I did not let anyone know
4 that: Oh, your mom is a whore.

5 Q. That's why you didn't scream?

6 A. Exactly.

7 Q. You didn't want to be found like that?

8 A. Exactly.

9 Q. Okay.

10 A. Would you mind? I live there. I bought my house there.
11 My kid go to that school.

12 Q. Okay. So I just want to be clear, you told him no, you
13 tried to pull up your pants, and you got up --

14 A. Yes.

15 Q. -- to try to stop this?

16 A. Yes, I tried to say no, and then he pushed it in and
17 that's done. It's finish.

18 Q. It was over in a second?

19 A. Yes.

20 Q. Okay. Mr. Chandler had no problems being erect there in
21 the classroom; right?

22 MR. MADDEN: Objection. Speculation.

23 THE WITNESS: Do you --

24 THE COURT: Rephrase your question.

25 BY MS. FILO:

26 Q. Mr. Chandler was able to successfully have intercourse
27 with you in that classroom; right?

28 A. Yes.

1 Q. Okay. I don't have any further questions, Annie. Thank
2 you.

3 THE COURT: Thank you.

4 Redirect?

5 MR. MADDEN: Thank you, Your Honor.

6 REDIRECT EXAMINATION

7 BY MR. MADDEN:

8 Q. Annie, do you know who Marsha Edick is?

9 A. Yes.

10 Q. Who is Marsha Edick?

11 A. The assistant.

12 Q. My investigator?

13 A. Yes.

14 Q. Blond lady?

15 A. (Shakes head up and down.)

16 Q. Yes?

17 A. Yes.

18 Q. I'm sorry. Are you okay? You need a break, or you need
19 a glass of water?

20 A. I'm okay.

21 Q. Okay. Do you remember her coming to your condominium
22 and having a conversation with you about Craig Chandler?

23 A. Yes.

24 Q. And you gave her a statement; correct?

25 A. Yes.

26 Q. And you talked about the night that you went out to
27 dinner and coming back to your apartment; right?

28 A. It's correct.

1 Q. And when you spoke with Ms. Edick the first time, you
2 told her that you had sex in your apartment; correct?

3 A. That's correct.

4 Q. Okay.

5 A. But I did not remember the whole thing.

6 Q. Okay. But that's what you told Ms. Edick; correct?

7 A. Yes.

8 Q. All right. And you also told Ms. Edick that you had sex
9 with Mr. Chandler in his classroom; right? The first night
10 that she came?

11 A. She told me. She asked me.

12 Q. Yes.

13 A. And then I said yes.

14 Q. Yes. All right.

15 Now, when you had that first meeting with
16 Ms. Edick, you never told her that Craig Chandler raped you
17 in the classroom, did you?

18 A. I -- because I did not --

19 Q. Excuse me. Could you just --

20 MR. MADDEN: Your Honor, would the Court please
21 direct the witness to answer the question?

22 THE COURT: First, listen to Mr. Madden's question
23 and just try to answer just what he's asking.

24 THE WITNESS: Oh.

25 BY MR. MADDEN:

26 Q. Let me ask the question again. Please just answer the
27 question.

28 When Ms. Edick met with you, you told her that Mr.

1 Chandler had sex with you in his classroom; right?

2 A. That's correct.

3 Q. And at that meeting with Ms. Edick, you never told
4 Ms. Edick that you felt like he raped you, did you?

5 A. I did not tell her.

6 Q. Okay. All right.

7 Now, at a later time, she came out to speak with
8 you again; right?

9 A. It's correct.

10 Q. And she had you review a report that she made of her
11 first meeting with you; right?

12 A. It's correct.

13 Q. And she sat down with you and asked you to read the
14 report; right?

15 A. It's correct.

16 Q. And you read the report with her; right?

17 A. It's correct.

18 Q. And she asked if you would sign it and date it; is that
19 right?

20 A. Yes, but I told her different.

21 Q. All right. So you admitted to Ms. Edick that what you
22 told her was accurate when she first met with you, but you
23 wanted to make some changes?

24 A. No. It's inaccurate.

25 Q. I'm sorry?

26 A. It was not accurate.

27 Q. You wanted to make some changes in her report?

28 A. I did want her to change it.

1 Q. And she did make those changes; right?

2 A. That's correct.

3 Q. And she actually printed on the report the changes that
4 you wanted her to make; right?

5 A. It's correct.

6 Q. Okay. And then she made every change that you asked her
7 to make; right?

8 A. She did.

9 Q. And then you did date and sign the report; right?

10 A. She did.

11 Q. But after she did, after she changed the report, you did
12 date and sign it; correct?

13 A. She asked me to date it and sign it.

14 Q. Okay. So do you remember the date that you first spoke
15 with her?

16 A. I did not remember.

17 Q. You think it could have been on or about January the
18 9th?

19 A. I remember after I met the police sheriff.

20 Q. Okay. And then do you recall her coming to see you
21 about three months later?

22 A. I did not recall. She waiting when I'm home. She come
23 to my house. I do not know who she is.

24 Q. The second time you didn't know who she was?

25 A. No. The first time, and the second time she came
26 without notice.

27 Q. All right. Okay.

28 And has Ms. Edick been fair with you?

1 A. Marsha?

2 Q. Yes.

3 A. She seemed nice lady.

4 Q. Did you actually ask her to be in court with you if she
5 could?

6 A. Yes.

7 Q. Okay. Now, I think that you testified that after you
8 heard something at the door in the classroom, Mr. Chandler
9 told you it was the janitor; right?

10 A. Behind the back -- where we stand, behind that, next to
11 where we sit.

12 Q. Okay.

13 A. It was something that tried to open the door.

14 Q. At some point after that, did you see Mr. Chandler go
15 over to the door and lock it or anything?

16 A. It was locked. It locked already.

17 Q. How do you know that?

18 A. He say that.

19 Q. He said it was locked? Okay. All right.

20 MR. MADDEN: One moment, please, Your Honor.

21 THE COURT: Yes.

22 BY MR. MADDEN:

23 Q. When Mr. Chandler was kissing you, prior to having
24 sexual intercourse in the classroom, you weren't struggling
25 with him physically at all, were you?

26 A. What did you mean?

27 Q. Were you struggling to get away or push him away or
28 anything?

1 A. It was a janitor, so I was so nervous, I said: No,
2 janitor. I said: No, janitor. That's it, but it wasn't --

3 Q. But my question is, you weren't -- you didn't say no to
4 Mr. Chandler and you were not struggling?

5 A. I said: No, janitor.

6 MS. FILO: Objection, Your Honor.

7 THE WITNESS: I said: No, janitor.

8 BY MR. MADDEN:

9 Q. You said: No, janitor?

10 A. Yeah, they coming.

11 Q. Okay.

12 A. I feel awkward.

13 Q. Okay. Thank you.

14 MR. MADDEN: I have no further questions.

15 THE COURT: Ms. Filo, recross, or do you have --

16 MS. FILO: No, Your Honor. No further questions.

17 THE COURT: Okay. Annie, you may step down. You
18 are done and you are free to leave.

19 THE WITNESS: Thank you.

20 THE COURT: Thank you.

21 Ladies and gentlemen, at this time, we're going to
22 take the evening recess. I'll order all members of the jury
23 to report to the jury assembly room on the second floor
24 tomorrow morning at nine, and we'll continue with the
25 testimony tomorrow at nine.

26 MR. MADDEN: I need to have a witness ordered back.
27 May I do that after the jury leaves, or do we do it before
28 the jury leaves?

1 THE COURT: Well, I'll -- I want to excuse the
2 jurors.

3 MR. MADDEN: That will be fine.

4 THE COURT: They don't need to be here. Thank you
5 for letting me know about that.

6 All members of the jury, you are excused. See you
7 tomorrow morning.

8 (Whereupon, the jurors were excused and the
9 proceedings were had outside the presence of the jury.)

10 MR. MADDEN: Your Honor, the witness is Maria Leon.
11 She's under subpoena. She's Arleth's mother. I would like
12 her ordered back tomorrow morning. I'm sorry. She's being
13 assisted by a Spanish speaking woman. She's not an official
14 interpreter; correct? Or are you? She's -- I apologize.
15 Your name, please.

16 MS. ORNALES: Monica Ornales.

17 THE COURT: Okay. Ms. Leon, I have to order you
18 back tomorrow morning, or sometime tomorrow. Is coming back
19 tomorrow morning the best time for you?

20 MS. LEON: That's fine.

21 THE COURT: Okay. It's better for you in the
22 morning rather than the afternoon?

23 MS. LEON: Yes, for me in the morning, that's fine,
24 or what time in the afternoon?

25 THE COURT: Well, I'm asking you what is best for
26 you.

27 MS. LEON: It's best in the afternoon.

28 THE COURT: Counsel, is there any reason why I

1 couldn't bring her in the afternoon and start with your
2 doctor in the morning?

3 MR. MADDEN: Um, I guess that will work.

4 THE COURT: Ms. Filo, any comment about that?

5 MS. FILO: No. That's fine, Your Honor.

6 THE COURT: My concern is that we we've had her
7 here today, and I would like to try to make it convenient for
8 her.

9 MR. MADDEN: I understand.

10 THE COURT: And if it's not a disruption for
11 anybody, I would prefer to accommodate her.

12 MR. MADDEN: Okay.

13 THE COURT: How long is she going to be?

14 MR. MADDEN: I don't know, Your Honor. I'm
15 thinking perhaps an hour, maybe less.

16 THE COURT: See, my concern is starting with her at
17 nine and delaying getting to your expert.

18 MR. MADDEN: That's true.

19 THE COURT: Because if we start late with your
20 expert and not finish with your expert, that could create
21 some problems --

22 MR. MADDEN: Yes.

23 THE COURT: -- for your expert.

24 MR. MADDEN: That's true. Whatever the Court
25 prefers.

26 THE COURT: So, ma'am, you prefer the afternoon? I
27 could bring you back in the morning, get you first thing in
28 the morning, have you finish, or bring you back in the

1 afternoon?

2 MS. LEON: Okay. That's fine. In the morning,
3 sorry. That's fine.

4 THE COURT: No. I appreciate your willingness to
5 come in the morning or the afternoon. I want to do as much
6 as I can to make it as convenient for you. Then, what I'm
7 going to do is order you here at 9:00 o'clock in the morning.
8 Please be right outside the courtroom, and I'm going to ask
9 you to come a little earlier in case there is a line outside.
10 And what I mean a little earlier, if you get outside by, you
11 know, 20 to nine, that give you more than enough time to get
12 into the court facility. Okay?

13 MS. LEON: Okay. That's fine.

14 THE COURT: When you testify, we're going to get
15 you the services of a Spanish interpreter. So when you are
16 testifying in court, I'm assuming that would make you feel
17 more comfortable, even though I get the sense you understand
18 English?

19 MS. LEON: Yes.

20 THE COURT: Okay. Then we'll do that. Thank you.
21 I'll order counsel and Mr. Chandler here tomorrow
22 at 9:00 a.m. We'll be in recess. I will start with this
23 witness.

24 MR. MADDEN: Thank you, Your Honor.

25 (Whereupon, the Court took the evening recess.)
26
27
28

1 STATE OF CALIFORNIA)
2 COUNTY OF SANTA CLARA)
3

4 I, JAMIE L. MIXCO, HEREBY CERTIFY THAT:

5 The foregoing is a full, true, and correct
6 transcript of the testimony given and proceedings had in the
7 above-entitled action taken on the above-entitled date; that
8 it is a full, true, and correct transcript of the evidence
9 offered and received, acts and statements of the Court, also
10 all objections of counsel, and all matters to which the same
11 relate; that I reported the same in stenotype to the best of
12 my ability, being the duly appointed and official
13 stenographic reporter of said Court, and thereafter had the
14 same transcribed into typewriting as herein appears.

15 I further certify that I have complied with CCP
16 237(a)(2) in that all personal juror identifying information
17 has been redacted if applicable.

18
19 Dated:
20
21

22 _____
23 Jamie L. Mixco, C.S.R.
Certificate No. 12708

24 ATTENTION:
25 CALIFORNIA GOVERNMENT CODE
SECTION 69954(D) STATES:

26 "ANY COURT, PARTY, OR PERSON WHO HAS PURCHASED A TRANSCRIPT
27 MAY, WITHOUT PAYING A FURTHER FEE TO THE REPORTER, REPRODUCE
28 A COPY OR PORTION THEREOF AS AN EXHIBIT PURSUANT TO COURT
ORDER OR RULE, OR FOR INTERNAL USE, BUT SHALL NOT OTHERWISE
PROVIDE OR SELL A COPY OR COPIES TO ANY OTHER PARTY OR
PERSON."

EXHIBIT 3

(Vol. 15)

TO THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

---o0o---

THE PEOPLE OF THE STATE OF)
CALIFORNIA,)

Plaintiff - Respondent,)

v.)

No. C1223754

CRAIG RICHARD CHANDLER,)

Defendant - Appellant.)

COPY

VOLUME 15

PAGES 1434 - 1541

JULY 25, 2013

---o0o---

REPORTER'S TRANSCRIPT ON APPEAL
FROM THE JUDGMENT OF THE SUPERIOR COURT
OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SANTA CLARA
BEFORE THE HONORABLE ARTHUR BOCANEGRA, JUDGE, AND JURY

---o0o---

APPEARANCES:

FOR PLAINTIFF-RESPONDENT: OFFICE OF THE ATTORNEY GENERAL
BY: KAMALA D. HARRIS,
Attorney General of the State
of California

FOR DEFENDANT-APPELLANT: In Propria Persona

1 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
 2 IN AND FOR THE COUNTY OF SANTA CLARA
 3 BEFORE THE HONORABLE ARTHUR BOCANEGRA, JUDGE, AND JURY
 4 DEPARTMENT NO. 37

5 ---o0o---

6
 7 THE PEOPLE OF THE
 8 STATE OF CALIFORNIA,)
 9 PLAINTIFF,) CASE NO. C1223754
 10 v.)
 11 CRAIG RICHARD CHANDLER,)
 12 DEFENDANT.)
 13 /

14
 15 ---o0o---

16
 17 REPORTER'S TRANSCRIPT OF PROCEEDINGS

18 JULY 25, 2013

19
 20 ---o0o---

21
 22
 23 APPEARANCES:

24 FOR THE PEOPLE: ALISON FILO
 25 Deputy District Attorney
 26
 27 FOR THE DEFENDANT: BRIAN MADDEN
 Attorney at Law
 28 OFFICIAL COURT REPORTER: JAMIE L. MIXCO
 C.S.R. No. 12708

INDEX**EXAMINATION****Witness Name****Page****MARIA LEON**

Direct By Mr. Madden1438

Cross By Ms. Filo1446

DR. WILLIAM O'DONOHUE

Direct By Mr. Madden1452

Cross By Ms. Filo1494

PEOPLE'S EXHIBITS**Exhibits****Description****Page**

24 Marked

document

1512

1 San Jose, California July 25, 2013

2 PROCEEDINGS

3 THE COURT: Thank you, ladies and gentlemen. The
4 record will reflect all members of the jury are present, both
5 counsel are present, Mr. Chandler is present in the courtroom
6 as well.

7 And, Mr. Madden, your next witness.

8 MR. MADDEN: Thank you, Your Honor. The defense
9 calls Maria Leon.

10 MARIA LEON,

11 Being called as a witness on behalf of the
12 Defendant, having been first duly sworn, was examined and
13 testified as follows:

14 THE CLERK: For the record, ma'am, please state and
15 spell your first and last name.

16 THE WITNESS: Maria Leon. You spell it M-a-r-i-a,
17 L-e-o-n.

18 MR. MADDEN: Good morning, ma'am.

19 THE COURT: Good morning. The lawyers are going to
20 be asking you questions. It's important that you listen to
21 the question and only answer what is being asked. You must
22 wait for the question to be interpreted from English into
23 Spanish and answer in Spanish because you're using the
24 interpreter. Even though you understand English, you feel
25 more comfortable in the court to use the interpreter; is that
26 correct?

27 THE WITNESS: Yes. Thank you.

28 THE COURT: Okay. Thank you.

1 Direct, Mr. Madden.

2 MR. MADDEN: Thank you, Your Honor.

3 DIRECT EXAMINATION

4 BY MR. MADDEN:

5 Q. Good morning, Ms. Leon. My name is Brian Madden.

6 A. Good morning.

7 Q. You are Arleth's mother; correct?

8 A. Yes.

9 Q. And I want to ask you some questions, beginning with the
10 time in January of 2012 where you saw Mr. Chandler on the TV.

11 A. Yes.

12 Q. All right. Did you see Mr. Chandler on the news
13 sometime near January the 10th of 2012?

14 A. My sister saw him first on the news, and then she told
15 me about it, and then I saw him on the news.

16 Q. Okay. Did you see his picture?

17 A. Yes.

18 Q. And you knew that the man on the news had been arrested
19 for molesting children at O.B. Whaley Elementary School?

20 A. Yes, correct.

21 Q. And later you learned that the person you saw on TV was
22 your daughter's teacher when she was in the third grade?

23 A. Yes.

24 Q. And in January of 2012, your daughter was in the fourth
25 grade at O.B. Whaley; correct?

26 A. Yes.

27 Q. Okay. Did you then begin asking your daughter about
28 whether Mr. Chandler did anything to her?

1 A. Yes.

2 Q. And did you continue to ask her about whether Mr.
3 Chandler did anything over a period of three days?

4 MS. FILO: Objection, Your Honor. Leading.

5 THE COURT: Sustained. Rephrase.

6 MR. MADDEN: All right.

7 THE COURT: If there was an answer, I will strike
8 it.

9 BY MR. MADDEN:

10 Q. For how many days did you question your daughter about
11 whether Mr. Chandler did anything to her?

12 MS. FILO: Objection. Assumes facts not in
13 evidence.

14 THE COURT: If you could rephrase your question,
15 Mr. Madden.

16 BY MR. MADDEN:

17 Q. How many days did you talk to your daughter about her
18 interaction with Mr. Chandler?

19 A. I don't remember how many days I continued asking her.
20 I don't remember exactly how many days, but when I asked her,
21 she denied it. She continued denying it.

22 Q. She repeatedly denied it for the whole period that you
23 were questioning her; right?

24 A. Yes.

25 Q. All right. But you kept questioning her; right?

26 A. Yes.

27 Q. All right. And have you had a chance to read -- strike
28 that. Let me ask another question.

1 Do you remember going to the San Jose Police
2 Department on or about January 17th to talk about your
3 daughter with the police?

4 A. Yes, I did. I don't remember the exact date, but I do
5 remember having gone to the police department. Yes.

6 Q. All right. And this morning before you testified, did
7 you review with the interpreter three pages of a transcript
8 of a conversations between you and Officer Emilio Perez?

9 A. Yes. I did go to the police department, but I don't
10 remember the name of the person that interviewed me.

11 Q. Were the words that you read the words that you spoke on
12 the 17th with the officer?

13 A. Some, but not all words are there.

14 Q. So you don't think that this transcript is complete?

15 A. No, because I remember having said other things besides
16 those.

17 MS. FILO: Your Honor, could we approach, please?

18 THE COURT: Yes.

19 (Whereupon, there was a discussion at the bench.)

20 BY MR. MADDEN:

21 Q. Do you remember when you first asked your daughter if
22 anything happened and her saying: No, Mommy. He didn't do
23 anything?

24 A. Yes, she said that nothing had happened.

25 Q. Okay. And she also said: He gives me lollipops. He
26 gives me lollipops?

27 A. Yes.

28 Q. Okay. You remember telling her: Mija, you got to tell

1 me the truth because there are things that older, bad people
2 do and it's not okay?

3 MS. FILO: Objection, Your Honor. Hearsay.
4 Leading.

5 THE COURT: Sustained. If you'd rephrase your
6 question.

7 BY MR. MADDEN:

8 Q. Do you remember asking your daughter about telling her
9 about telling you the truth?

10 A. Yes.

11 Q. And did your daughter say -- do you remember your
12 daughter saying: Well, Mommy --

13 MS. FILO: Objection, Your Honor. Calls for
14 hearsay and leading.

15 THE COURT: Sustained.

16 MR. MADDEN: It's a prior inconsistent statement,
17 Your Honor.

18 THE COURT: It's leading.

19 BY MR. MADDEN:

20 Q. Do you remember your daughter saying anything about
21 turning off the lights?

22 A. Yes.

23 Q. What did she say?

24 A. She said that -- that he would turn off the lights, and
25 then after he would turn off the lights, he would have her
26 touch some of his parts.

27 Q. She actually said he would have her touch his parts?

28 A. Sorry. I'm confused. She just said that at first, but

1 she didn't want to tell me anything else.

2 Q. After she told you that, did she tell you: No, Mommy,
3 it's not true. It's a lie?

4 MS. FILO: Objection, Your Honor. Leading. Calls
5 for hearsay.

6 MR. MADDEN: Prior inconsistent statement, Your
7 Honor.

8 THE COURT: Okay. It is leading. If you could
9 rephrase it.

10 BY MR. MADDEN:

11 Q. What did your daughter tell you about the truth of her
12 statement about turning the lights off?

13 A. She said that that was true, but she didn't tell me
14 anything else.

15 Q. Did she tell you that about -- the part about touching
16 his parts was a lie?

17 MS. FILO: Objection, Your Honor. Leading. Calls
18 for hearsay.

19 THE COURT: Sustained.

20 BY MR. MADDEN:

21 Q. Did you continue to question your daughter?

22 A. Yes.

23 Q. Every day?

24 A. Yes.

25 Q. How many times would you question her throughout the
26 day?

27 A. I don't remember, but I asked her many times. And she
28 would get upset, you know, actually, because I was continuing

1 asking her.

2 Q. She was getting tired of telling you it wasn't true, it
3 didn't happen?

4 MS. FILO: Objection, Your Honor. Leading. Calls
5 for hearsay.

6 THE COURT: I'm going to sustain the objection.
7 It's misstating her testimony.

8 MR. MADDEN: All right.

9 BY MR. MADDEN:

10 Q. Do you remember the things that she would say about
11 being tired of you asking?

12 A. She said that she didn't want to say anything else.

13 Q. But you kept asking her; right?

14 A. Yes.

15 Q. All right. Did you also have a conversation with her,
16 where you clarified whether she was talking about his part or
17 her part?

18 MS. FILO: Objection, Your Honor. Leading.

19 THE COURT: Sustained. He's going to rephrase his
20 question.

21 BY MR. MADDEN:

22 Q. Did she ever tell you anything about her part?

23 A. That was when she talked to my niece.

24 Q. Would it be fair to state that during these days that
25 you were questioning your daughter, you were interrogating
26 her?

27 MS. FILO: Objection, Your Honor. Leading.

28 MR. MADDEN: No, it's not.

1 THE COURT: Overruled. I will allow you to answer
2 that question.

3 THE WITNESS: Could you repeat the question?

4 BY MR. MADDEN:

5 Q. Yes. Would it be fair to describe -- your questioning
6 of your daughter over this period of time, would it be fair
7 to describe that as interrogating her?

8 A. I say I was interrogating her. I wanted her to tell me.

9 Q. I understand, but interrogating is a fair word; correct?

10 A. Well, not quite. I mean, I guess I was pressing her to
11 tell me because I wanted to know if she is being abused
12 because of her behavior.

13 Q. All right. Did you use the word "interrogating" to the
14 police officer to describe your questioning?

15 MS. FILO: Objection. Hearsay.

16 THE COURT: Sustained.

17 BY MR. MADDEN:

18 Q. What did you tell the police officer, if anything, about
19 interrogating?

20 MS. FILO: Objection, Your Honor. Hearsay, and I
21 will ask for an admonishment.

22 THE COURT: Sustained. The objection is sustained.

23 BY MR. MADDEN:

24 Q. At some point, did you ask your daughter again anything
25 about if her parts were touched?

26 A. After I found out about the truth or before?

27 Q. Any time after?

28 A. Well, if it was after I found out the truth, I mean, she

1 told me everything afterwards.

2 Q. By afterwards, you mean after Noemi contacted you?

3 A. Yes.

4 Q. And at the time that this questioning of your daughter
5 was going on, was Naomi -- excuse me -- Noemi living with you
6 at your house?

7 A. Yes.

8 Q. All right. Did you ever hear Noemi questioning your
9 daughter about Mr. Chandler?

10 A. No, because what happened was that I -- I had to go to
11 work, so I left my daughter with this lady who looked after
12 her. I left my nieces, my nephews, and my daughters with
13 this lady, and then later my niece called me and she told me
14 what happened.

15 Q. Were you aware that Noemi was also questioning your
16 daughter during the time that you were questioning your
17 daughter?

18 A. No. I mean, they would play and I think -- I don't
19 think she would interrogate her or anything. I think while
20 playing, Noemi would ask her if -- you know, if she had been
21 touched in school or something.

22 Q. You didn't personally hear any of the conversations
23 between your daughter and Noemi about Mr. Chandler?

24 A. No, because these conversations happened when my
25 daughter was with this lady who looked after her. And, in
26 fact, they -- you know, the people who watched her found out
27 themselves because that's when she said everything.

28 Q. And that person was Claudia; right?

1 A. Yes, yes.

2 Q. Okay.

3 MR. MADDEN: I have no further questions, Your
4 Honor.

5 THE COURT: Cross-examination.

6 MS. FILO: Thank you.

7 CROSS-EXAMINATION

8 BY MS. FILO:

9 Q. Good morning, Ms. Leon.

10 A. Good morning.

11 Q. So, Ms. Leon, I want to ask you a little bit about
12 Arleth in general. Okay?

13 A. Yes, that's fine.

14 Q. You said something about Arleth's behavior changing?

15 A. Yes.

16 Q. And you said that was one of the reasons that you were
17 especially concerned?

18 A. Yes.

19 Q. What did you mean?

20 A. Because, I mean, she started having dreams. In fact,
21 like, she would fall asleep on the sofa and she -- then she
22 would get up and she would say: Don't touch me. Don't touch
23 me. And then sometimes -- my husband also found out, you
24 know, he would see my daughter wake up.

25 MR. MADDEN: Objection, Your Honor. That's
26 hearsay.

27 THE COURT: Okay. What the husband saw I will
28 strike. Continue with your answer.

1 THE WITNESS: So I feel bad because, you know, she
2 wake up and she would be, like, feverish, you know, when you
3 have a fever, and then I would hug her and I say: It's okay.
4 It's okay. It's me. Then she would be like: Don't touch
5 me. Don't touch me.

6 BY MS. FILO:

7 Q. This was new behavior for her?

8 A. Yes, it was new. And there were -- there was a time
9 also that she didn't want to go to school anymore. She
10 didn't want to go.

11 Q. When was that time?

12 A. Well, it was -- honestly, I don't remember exactly when
13 this was, but she'd be -- she'd start crying and she said,
14 like: I don't want to go to school. I don't want to go to
15 school.

16 Q. Okay. Ms. Leon, is -- you know Arleth better than
17 anyone in the world. Yes?

18 A. Yes.

19 Q. Is Arleth an honest child?

20 A. Yes.

21 Q. She's not a troublemaker, is she?

22 A. No.

23 Q. She doesn't lie to you?

24 A. No, she's not a liar.

25 Q. She didn't make things up?

26 A. No, she didn't.

27 Q. Never known her to do that?

28 A. No.

1 Q. You've taught her the difference between the truth and a
2 lie?

3 A. Yes.

4 Q. Have you told her every time that she's talked to the
5 police to tell the truth?

6 A. Yes.

7 Q. Whenever she comes to court, your instruction to her has
8 been to tell the truth?

9 A. Yes.

10 Q. Okay. Ms. Leon, when you were asking Arleth about
11 whether or not Mr. Chandler had done anything to her, did you
12 have any idea what conduct was even being alleged?

13 A. You mean after I found out?

14 Q. No. So when you were asking her, you know, whether or
15 not Mr. Chandler had done anything to her, did you know what
16 "done" would mean?

17 MR. MADDEN: Objection. That is speculation, Your
18 Honor.

19 THE COURT: Excuse me? The objection?

20 MR. MADDEN: Speculation.

21 THE COURT: Overruled. You may answer the
22 question.

23 THE WITNESS: Well, I saw, you know, something on
24 the news, but I never thought that had happened to my
25 daughter.

26 BY MS. FILO:

27 Q. Okay. I guess what I'm trying to ask you is this. You
28 knew that Mr. Chandler had been accused of child molestation;

1 right?

2 A. Yes.

3 Q. But you had no idea what kind; right?

4 A. No, I have no idea.

5 Q. I mean, child molestation could include everything
6 from --

7 MR. MADDEN: Objection, this is a speech, Your
8 Honor. It's not a question.

9 THE COURT: I will sustain the objection. If you
10 could rephrase it.

11 MS. FILO: Sure.

12 BY MS. FILO:

13 Q. Did you have any idea what the conduct was, or did you
14 just have the general description child molestation?

15 MR. MADDEN: Objection. Compound.

16 THE COURT: Overruled. You may answer the
17 question.

18 THE WITNESS: Well, all I saw was that he had
19 abused some children.

20 BY MS. FILO:

21 Q. Okay. So when you were asking Arleth whether anything
22 happened to her, you were asking her whether or not he ever
23 touched her body parts; right?

24 A. Yes.

25 Q. Because that's what you suspected when you hear child
26 molestation?

27 A. Yes.

28 Q. So Arleth never told you that she was blindfolded in the

1 classroom by herself while things were put in her mouth?

2 A. No, she didn't. She didn't tell me that at first. She
3 told me that after, after I found out the whole truth.

4 Q. Because she had no idea that that was child molestation?

5 MR. MADDEN: Objection, Your Honor. Speculation.

6 THE COURT: Sustained.

7 BY MS. FILO:

8 Q. You never knew to ask her: Arleth, were you blindfolded
9 in a classroom by yourself while things were put in your
10 mouth?

11 MR. MADDEN: Objection. Speculation.

12 THE COURT: I'll sustain the objection.

13 MR. MADDEN: Also calls for a statement, Your
14 Honor.

15 THE COURT: Well --

16 MS. FILO: I could ask another question.

17 THE COURT: The way you phrased it, I will sustain
18 the objection.

19 BY MS. FILO:

20 Q. You never asked her: Arleth, were you blindfolded in a
21 classroom by yourself with Mr. Chandler while things were put
22 in your mouth?

23 A. No, I never asked her that.

24 Q. Ms. Leon, does Arleth receive some special services at
25 school?

26 A. Not in the school.

27 MR. MADDEN: Objection, Your Honor. Relevance,
28 Your Honor. May we approach?

1 THE COURT: Yes. I think I know the relevancy, but
2 you may approach.

3 (Whereupon, there was a discussion at the bench.)

4 THE COURT: Objection is overruled, but, Ms. Filo,
5 I would ask you to rephrase the last question.

6 MS. FILO: Sure.

7 BY MS. FILO:

8 Q. Ms. Leon, does Arleth have what's called an IEP?

9 A. Frankly, I don't know. I haven't asked her that
10 specifically.

11 Q. Okay. Does she get -- is she taken out of the class for
12 about an hour a few times a week to get some special --
13 almost tutoring help?

14 A. Yes. Oh, yes. And, yes, she's aware of that, that she
15 goes to this special class. She knows.

16 Q. Okay. Ms. Leon, could you tell me how Arleth has
17 reacted to being involved in the court process?

18 A. It -- it hasn't been good.

19 MR. MADDEN: Your Honor, I'm going to object. This
20 question calls for narrative. Sounds like we're about to get
21 a narrative.

22 THE COURT: Let me hear your response.

23 THE WITNESS: Well, she's become, like, angry, you
24 know. She gets angry with her sister. She hits her -- well,
25 not really hitting her, just not treating her well, you know.
26 And not so much now, because she's been going to a lot of
27 therapy, but she was like that at first.

28 ///

1 BY MS. FILO:

2 Q. Does she enjoy coming to court?

3 A. No.

4 Q. This isn't a fun process for her?

5 A. No.

6 MS. FILO: That's all the questions I have. Thank
7 you, Your Honor.

8 THE COURT: Redirect?

9 MR. MADDEN: Nothing, Your Honor.

10 THE COURT: Thank you, ma'am. You are excused and
11 you may step down. You are free to leave.

12 Your next witness available, Mr. Madden?

13 MR. MADDEN: Yes. One moment, please, Your Honor.

14 THE COURT: Yes.

15 DR. WILLIAM O'DONOHUE,

16 Being called as a witness on behalf of the
17 Defendant, having been first duly sworn, was examined and
18 testified as follows:

19 THE CLERK: For the record, sir, please state and
20 spell your first and last name.

21 THE WITNESS: My name is Dr. William O'Donohue.
22 William is W-i-l-l-i-a-m. O'Donohue is O-'-D-o-n-o-h-u-e.

23 THE COURT: Thank you.

24 Direct examination, Mr. Madden.

25 MR. MADDEN: Thank you, Your Honor.

26 DIRECT EXAMINATION

27 BY MR. MADDEN:

28 Q. Dr. O'Donohue, what is your occupation?

1 A. I'm a licensed clinical psychologist in the state of
2 Nevada, and I'm a professor of clinical psychology at the
3 University of Nevada, Reno.

4 Q. Could you tell the jury about your educational
5 background?

6 A. Yes. I have a bachelor's degree in psychology from the
7 University of Illinois at Champaign-Urbana. I have a
8 master's degree in clinical psychology at the State
9 University of New York at Stony Brook. I have a PhD in
10 clinical psychology at the State University of New York at
11 Stony Brook, and then I have a master's degree in philosophy
12 from Indiana University.

13 Q. And what is your current employment?

14 A. I'm employed by the University of Nevada, Reno, where
15 I'm a professor in the Department of Psychology. I'm also a
16 professor there in the National Judicial College where judges
17 go to get continuing education. I'm also the director of a
18 clinic that treats sexual assault victims, treats both
19 children who have been sexually abused and women who have
20 been sexually assaulted.

21 Q. So you have been personally involved in therapy with
22 child victims of sexual abuse?

23 A. Yes, during my entire 30-year career. And for the past
24 17 years, I have written a grant to the National Institute of
25 Justice, a federal agency, to support this clinic. And
26 again, we've treated children and women who have been raped
27 for free, and I've treated over 2,000 children who have been
28 sexually abused.

1 Q. You personally treated over 2,000 children over the
2 course of your career?

3 A. Yes.

4 Q. Okay. So you mentioned a grant in a current clinic. Is
5 there a grant connected with that work?

6 A. Yes. It's a victim's of crime grant by the Department
7 of Justice in Washington, and we've had it for 17 years and
8 it just was renewed for another three years.

9 Q. Do you have any other current grants that you're working
10 under?

11 A. No. Just that grant.

12 Q. Okay. Have you published in the area of child sexual
13 abuse?

14 A. Yes.

15 Q. Tell me about your publications.

16 A. I have -- I published 70 books. Approximately a dozen
17 of those are about child sexual abuse or sexual deviance. I
18 have published over 200 journal articles. Again, about a
19 quarter of those will be about child sexual abuse, including
20 the treatment of sexually abused children, assessment of
21 sexually abused children, how to do proper forensic
22 interviews of sexually abused children, how to analyze child
23 sexual abuse allegations, how to prevent -- technologies to
24 try to prevent child sexual abuse. Those will be the major
25 topics.

26 Q. All right. Have you ever qualified as an expert in the
27 courts of California before?

28 A. Yes.

1 Q. In what areas?

2 A. On child sexual abuse, on forensic interviewing of
3 children, on suggestibility and child sexual abuse
4 allegations, on pedophilia, and the typical patterns of child
5 molestation.

6 Q. Okay. How many times approximately where you estimate
7 you've qualified as an expert in California on those
8 subjects?

9 A. I haven't done a count, but I would say between 80 and
10 100.

11 Q. Have you ever been asked by law enforcement or judges to
12 interview children on the subject of child sexual abuse?

13 A. Yes, in Nevada.

14 Q. Could you tell me more about that?

15 A. I have had judges request that I interview children, do
16 a forensic interview, and write a report to them about their
17 abuse status. I have had police officers, especially in the
18 rural counties of Nevada, send children and their mothers to
19 me to do forensic interviews and write reports. And I've
20 trained police officers and mental health professionals in
21 Nevada about how to do forensic interviews of children.

22 Q. What is a forensic interview?

23 A. Forensic interview is in contrast to a clinical
24 interview. Clinical interview you are trying to find out
25 what sort of psychological problems a person has. The
26 forensic interview in contrast you are trying to find out
27 about historical events, their statements about historical
28 events, did these things occur, and you're looking at trying

1 to get as much detail about these without biasing them.

2 Q. All right. So police officers when they investigate
3 allegations of child sexual abuse interviewing child
4 witnesses, those are -- is that a form of a forensic
5 interview?

6 A. Yes.

7 Q. And the word "forensic" is connected with legal
8 purposes?

9 A. Yes.

10 Q. I believe you indicated earlier that you treated --
11 personally treated more than 2,000 children who have been
12 sexually abused?

13 A. Yes.

14 Q. All right.

15 MR. MADDEN: Your Honor, I offer Dr. O'Donohue as
16 an expert in the area of child sexual abuse of children and
17 forensic interviewing of children concerning sexual abuse.

18 THE COURT: Ms. Filo, do you wish to question the
19 doctor --

20 MS. FILO: No.

21 THE COURT: -- on his qualifications? Okay.

22 Then the Court will recognize him as an expert in
23 the areas requested by the defense.

24 MR. MADDEN: Thank you, Your Honor.

25 BY MR. MADDEN:

26 Q. Dr. O'Donohue, as part of your work in this case for me,
27 for the defense, have you been provided with certain material
28 to read and to listen to to help you in your work?

1 A. Yes.

2 Q. All right. And could you briefly summarize what you
3 have been provided?

4 A. I was given documents, legal: The People of the State
5 of California v. Craig Richard Chandler information summary,
6 5/30/12; transcript of interview of Isabell by Det. Pierce;
7 interview of -- second interview of Isabell by Det. Pierce;
8 interview of Isabell's mother by Det. Pierce; interview of
9 Becky by Det. Pierce; interview of Kim To; interview of
10 Laurie at school by Lisa and Dave; interview of Laurie,
11 second one, by Lisa and Dave; interview of Wendy; interview
12 of Maria Leon; interview of Arleth; interview of Noemi;
13 interview of Ashlyn; another interview of Ashlyn; Melissa
14 questionnaire; Isabell preliminary examination testimony;
15 Becky preliminary examination testimony; Laurie preliminary
16 examination testimony; Wendy preliminary examination
17 testimony; Arleth preliminary examination testimony, and the
18 San Jose Police Department narrative and supplemental
19 reports.

20 Q. All right. So as part of that material, you were given
21 CD's of all of the interviews that were recorded, either by
22 audio or by video; correct?

23 A. Correct.

24 Q. You were also given transcripts of the contents of those
25 CD's; correct?

26 A. Correct.

27 Q. At the core, they included everything that the defense
28 has been provided concerning the five complaining witness;

1 correct?

2 A. Correct.

3 MS. FILO: Objection, Your Honor. Calls for
4 speculation.

5 THE COURT: Sustained.

6 BY MR. MADDEN:

7 Q. You assumed you were given everything?

8 THE COURT: The last answer is stricken? Did you
9 hear the last question?

10 BY MR. MADDEN:

11 Q. You reviewed what I gave you and you assumed that was
12 everything?

13 A. I assumed it was everything you gave me. I know there
14 is other documents related to the case.

15 Q. All right. So you've spent a considerable amount of
16 time, I assume, listening to each and every one of those CD's
17 and reading all of the transcripts that were provided?

18 A. Correct.

19 Q. All right. Now, have you prepared in this case a
20 report, a child sexual abuse investigation report?

21 A. Yes.

22 Q. That's a 70 page single-spaced document?

23 A. Correct.

24 Q. You will be relieved to know I will not ask you to read
25 that this morning.

26 A. Okay.

27 Q. Rather than have you read it, I would like to cover
28 perhaps eight categories that you address in your letter.

1 Are you okay with that?

2 A. In my report?

3 Q. Yes. I mean in your report. I apologize.

4 And these would be areas that you, as a
5 psychologist, as an evaluator, had concerns about with
6 respect to the forensic interviews; correct?

7 A. Correct.

8 Q. All right.

9 A. Or the children's allegations themselves.

10 Q. Right.

11 A. That emerged in the forensic interviews.

12 Q. Right.

13 Now, let's begin with the category of
14 inconsistencies. I believe in your report you actually
15 created a table of inconsistencies; correct?

16 A. Correct.

17 Q. And do you have that report in front of you?

18 A. Yes.

19 Q. Okay. So this table begins on page 27 of your report;
20 is that correct?

21 A. Yes.

22 Q. All right. Could you tell me generally what the
23 significance of inconsistent allegations is?

24 A. It has two major -- it's important in two -- important
25 in two majors ways: One, most children when they make
26 allegations of sexual abuse do not have any inconsistencies
27 regarding core details. Core details being defined as the
28 central features of the abuse. So a core detail would be who

1 abused them, how many times, roughly where it occurred, what
2 were the acts, what the acts felt like.

3 This is in contrast to peripheral details such as
4 the color of the walls, the exact time of day, exactly what
5 they were wearing. These are less central. But because
6 sexual abuse is traumatic, children are focused on this, and
7 the major features of what happened to them are remembered
8 and then told consistently across tellings. So the number
9 one reason is usually children are consistent in reciting
10 core details of their abuse.

11 The second important reason is that an
12 inconsistency by logic we know that some statement is false.
13 If I tell you I'm exactly six foot tall and I tell you I'm
14 exactly seven foot tall, you know that one of those
15 statements is false. I can't be both.

16 Q. At the same time?

17 A. At the same time. So when a child says something
18 inconsistent, contradictory, we know that some of their
19 allegations by logic has to be false, and now we're trying to
20 figure out what is false and what is true. So that's the
21 second important reason why you have to examine
22 contradictions, inconsistencies.

23 Q. All right. So let me ask you to turn your attention
24 to the chart. The chart is apparently laid out essentially
25 as the information with Isabell being addressed first and
26 Becky, then Laurie, followed by Wendy and Arleth; correct?

27 A. Right.

28 Q. All right. So with respect to inconsistencies now, the

1 inconsistencies are directed to something specific like
2 allegations of something; correct?

3 A. Correct.

4 Q. All right. So let's -- let me ask you about the
5 allegation of how many times this occurred concerning -- all
6 of these are concerning Isabell; correct?

7 A. Correct.

8 Q. What were your findings concerning inconsistencies in
9 Isabell's statement about how many times this occurred?

10 A. Um, basically again, she gave different numbers across
11 the interviews.

12 Q. Interview one, what did she say?

13 A. Um, I'm not sure what she said on interview one.

14 Q. I'm sorry. In your chart, did you make a notation as to
15 the inconsistency?

16 A. Not that I have in my chart. No.

17 Q. All right.

18 MR. MADDEN: May I approach, Your Honor?

19 THE COURT: Yes.

20 (Whereupon, there was a discussion off the record.)

21 BY MR. MADDEN:

22 Q. How about the allegation about whether the subject --
23 the object made her choke?

24 A. Yes. In one interview she said that it made her choke.
25 According to the mother's interview, she, the mother, was
26 told by her it did not make her choke. And then in the
27 preliminary testimony she says the object made her choke.
28 And she is -- she told her mother that the object made her

1 choke. So that's inconsistent in terms of her reporting to
2 the mother and reporting between interview two and the
3 preliminary testimony.

4 Q. And inconsistent as to a core detail?

5 A. Yes. Whether something makes you choke is something
6 central to the abuse and something that would be remembered.

7 Q. So let me ask you, core details as opposed to peripheral
8 details; correct?

9 A. Correct.

10 Q. Core details are something that a child remembers over
11 time?

12 A. Yes, because they are central. And because they are
13 traumatic, they are hurtful. They are --

14 Q. So if something occurred, those core details should
15 remain consistent?

16 A. Correct.

17 Q. Is this your opinion or is this supported by scientific
18 literature?

19 A. It's supported by the scientific literature, that one
20 differentiating criterion, and it's not perfect, but it tends
21 to be associated with false memories is that core detail
22 change across the interviews. In cases where abuse actually
23 occurred, these core details tend to remain consistent across
24 interviews.

25 Q. All right. Okay. May we move to the allegation
26 concerning the taste of the object Mr. Chandler put in
27 Isabell's mouth. Could you find any inconsistencies in that
28 allegation?

1 A. Yes. In the first interview, she said it tasted like
2 strawberry, kind of like strawberry, faint strawberry.
3 Second interview she said it did not taste like strawberry.
4 In the preliminary testimony, she doesn't mention anything
5 about the taste.

6 Q. Again, core details?

7 A. Yes.

8 Q. Taste of the object in your mouth, if the object was an
9 object of sexual abuse, you would remember?

10 A. Or if it wasn't, yeah. If this unusual thing that is
11 happening to you, you would remember. She did, you know,
12 apparently remember in the sense that she says in interview
13 one that it tasted like strawberry, but then she contradicts
14 herself.

15 Q. Okay. Let's move on to another allegation, Isabell's
16 allegation about sounds that she heard while Mr. Chandler had
17 the object in her mouth.

18 A. Okay.

19 Q. Did you find key inconsistencies here?

20 A. Yes.

21 Q. Could you describe them?

22 A. In interview two, when she was asked directly about
23 this, she said she didn't hear anything. And in the
24 preliminary testimony, she said she heard keys. And when
25 asked why she didn't tell the detective, she said she simply
26 forgot.

27 Q. All right. Dr. O'Donohue, if I were to tell you that at
28 trial Isabell testified that after he took the object out of

1 her mouth, she heard keys and heard him zip up his pants,
2 would that be a new inconsistency?

3 A. Yes, that would be a new inconsistency regarding core
4 details. Because again, in the second interview she said she
5 didn't hear anything and now she's saying she heard two
6 distinct sounds, the keys and zipping up pants. And that's
7 inconsistent.

8 Q. Well, actually three: I didn't hear anything; I heard
9 the sound of keys; I heard the sound of keys and pants being
10 zipped; correct?

11 A. Correct.

12 THE COURT: Excuse me. Would counsel approach.

13 (Whereupon, there was a discussion at the bench.)

14 THE COURT: Thank you, Counsel.

15 Mr. Madden, I apologize for the interruption.

16 MR. MADDEN: Not at all.

17 BY MR. MADDEN:

18 Q. Dr. O'Donohue, I want to move in the consistency table
19 to Becky, if I may?

20 A. Okay.

21 Q. Let's address first Becky's allegation that Mr. Chandler
22 put something in her pants.

23 A. Okay.

24 Q. Did you find inconsistencies within the materials you
25 were provided on that subject?

26 A. Yes. In the first interview, she didn't mention that
27 allegation. In the second interview, she did make that
28 allegation, that Mr. Chandler put something in her pants

1 while she was laying down, but in the preliminary
2 testimony -- and again, she fails to make that allegation.
3 Again, that is also a core detail. When a teacher puts
4 something in a child's pants, it's something they would
5 remember and something that they would generally find, you
6 know, problematic.

7 Q. All right. Let's move to another allegation, her
8 allegation concerning the color of the gooey stuff. What
9 inconsistencies did you find concerning that allegation?

10 A. She was inconsistent on what color she alleged it was.
11 In the first interview, she said it was white, yellow, or
12 green. In the second, she said it was crystal clear, white,
13 yellow, and then she said she doesn't remember. In the
14 preliminary testimony, she says it was crystal clear. So the
15 color changes across tellings.

16 Q. All right. Do you find those inconsistencies to concern
17 core details?

18 A. Yes.

19 Q. Concerning her allegation about how she felt when Mr.
20 Chandler put an object in her mouth, what inconsistency did
21 you find?

22 A. Um, in the first and second interview, she never
23 mentions that it felt like she was going to choke, and only
24 in the preliminary testimony does she say that it feels like
25 he was going to make her choke. And again, that is
26 inconsistency.

27 Q. All right. And let's move to the allegation of how far
28 the object went into her mouth. What inconsistency did you

1 find there?

2 A. In the first interview, she said it went all the way in
3 her mouth. On the second interview, she didn't mention
4 anything like that. And in the preliminary testimony, she
5 denied it and said it didn't go all the way in her mouth.

6 Q. All right. Let's move to Laurie and her allegation
7 concerning a description of the objects as she felt with her
8 feet when she was alone with Mr. Chandler. What
9 inconsistency did you find?

10 A. First interview, she said she felt like a marker, pen,
11 or a glue stick; second interview, the top of a scissors or a
12 glue stick; and then the preliminary testimony, a glue stick
13 or a pen.

14 Q. All right. Again, core detail?

15 A. Yes.

16 Q. Move please to the allegation of whether she remembered
17 who Helen Keller was, or if she had read about Helen Keller.

18 A. First interview, she doesn't mention anything about that
19 topic, second interview said she did remember, and then a
20 preliminary testimony said she does not remember.

21 Q. All right. Let's move to the allegation concerning
22 whether she told her mom about staying behind at recess and
23 feeling objects with her feet.

24 A. First interview, she said she told her mom, second
25 interview said she also told her mom, and then preliminary
26 testimony said she doesn't remember telling her mom.

27 Q. Okay. Core details?

28 A. Yes.

1 Q. Concerning the allegation how she ended up in the
2 classroom. What inconsistency did you find?

3 A. In the first interview, she said she was held back in
4 the classroom while other kids went to recess. In the second
5 interview, she said she was held back in the classroom while
6 other kids went to recess, but in the preliminary testimony,
7 she says the yard supervisor brought her back to the
8 classroom.

9 Q. Now, do you recall in your review Laurie consistently
10 saying at interview one and at the preliminary examination
11 that Mr. Chandler never put anything in her mouth?

12 A. Correct. She said that.

13 Q. All right. And if I were to tell you that a
14 psychiatrist, a Dr. Lynn, who was seeing Laurie for an
15 evaluation testified that Laurie told her that he put objects
16 in her mouth, that the doctor concluded -- the doctor
17 concluded the object was a penis, would that be an
18 inconsistent -- a new inconsistency?

19 A. Yes.

20 Q. Would that be a significant new inconsistency?

21 A. That will be about a core detail, yes.

22 Q. All right. Let's move to Wendy concerning her
23 allegation about what the object Mr. Chandler put in her
24 mouth felt like. What inconsistency did you find?

25 A. Interview she said it felt like a gummy bear, and in the
26 preliminary testimony she says it felt like skin.

27 Q. All right. Let's move to the allegation concerning
28 Wendy's description of the taste of the object Mr. Chandler

1 put in her mouth. What inconsistency did you find?

2 A. In interview one, she did not describe it, the taste,
3 and in the preliminary testimony, she said it was a faint
4 strawberry taste.

5 Q. Let's move to the allegation concerning whether Mr.
6 Chandler held the object inside her mouth. What
7 inconsistency did you find?

8 A. Interview one, she said that he held it and moved it
9 inside her mouth, and in the preliminary testimony, said she
10 never felt her hand on the object inside her mouth.

11 Q. Finally, concerning Wendy, I would like you move to the
12 allegation concerning whether Mr. Chandler told her anything
13 when this object was inside her mouth.

14 A. First interview, she didn't mention anything. In the
15 preliminary testimony, she said she bit the object and he
16 told her not to bite it.

17 Q. All right. Then finally, let's move to Arleth. Would
18 you please address Arleth's allegation about to whom she
19 disclosed the incidents?

20 A. In interview one, she said she didn't tell her cousin,
21 then she said she told her cousin. And then she said she
22 told her mother first. In the preliminary testimony, she
23 said she told her cousin first, then she was wrong previously
24 when she told the detective that she didn't tell her cousin.

25 Q. All right. Please, the allegation of Arleth concerning
26 whether she saw Mr. Chandler's penis when she was down on the
27 ground.

28 A. She said in interview one that she didn't see his

1 weenie. Next, she said: I think I saw this, and pointed to
2 the penis on the anatomical drawing. In the preliminary
3 testimony, she doesn't mention this.

4 Q. All right. Let's move to the allegation of Arleth
5 concerning the object used by Mr. Chandler to push Arleth
6 from behind when she was on the ground.

7 A. In interview one, she said it was Mr. Chandler's head
8 pushing her, and in the preliminary testimony, she says it
9 was a bouncy ball.

10 Q. Then if I were to tell you that at trial she testified
11 that it was both her head and -- excuse me -- both his head
12 and a red bouncy ball but on two different occasions, would
13 that also be a further inconsistency on that subject?

14 A. Yes.

15 Q. Then if you would please turn your attention to Arleth's
16 allegation about what the water in her mouth tasted like.
17 What inconsistency did you find?

18 A. In interview one, first she said that it didn't taste
19 like anything, then she said it tasted bad. The interview
20 with Noemi reported that Arleth told her that it tasted like
21 pee. And then in the preliminary testimony, she says it
22 tasted like pee.

23 Q. And then finally, her allegation concerning whether the
24 lights were on or off during the incident?

25 A. Interview one, she said Mr. Chandler possibly turned off
26 the lights on two occasions, and then in the preliminary
27 testimony, she said the lights were on for all four
28 occasions.

1 Q. All right. Let's move to another category about details
2 that don't make sense. Could you tell me what you mean by
3 "details that don't make sense"?

4 A. In children's recounting of their allegations, in
5 children's narratives, it's usually a case that when they
6 have been abused, they are not telling any detail that would
7 be inconsistent with the way the abuse is typically carried
8 out. When they do tell such a detail, that would need an
9 explanation of why they are saying something like that.

10 Q. Is it kind of a common sense thing?

11 A. It's partly common sense, but also it's partly the
12 result of hearing a lot of allegations and understanding what
13 is standard.

14 Q. Okay. So could you give some examples of what you mean
15 by, in this particular evaluation, details that don't make
16 sense?

17 A. For example, Arleth reported that she was told to bite
18 the object in her mouth. If the object in her mouth at that
19 point was a penis, that's an unusual detail for a perpetrator
20 to tell a child to bite their penis. I have not seen that.
21 It would be painful. When I did -- have seen children making
22 this feature of their allegation, the abuse usually stops.
23 They usually do this spontaneously to stop being abused
24 early, but I have never seen the case where a perpetrator
25 places a penis in a child's mouth and asks the child to bite
26 it.

27 Q. That would be -- when you say you've never seen that,
28 that would be in the 2,000-plus cases that you have actually

1 treated sexual abuse victims in?

2 A. Yes, and in the literature.

3 Q. Okay.

4 A. Reading about other cases.

5 Q. And what about the directive, "chew it"?

6 A. Becky made that part of her allegation and that's the
7 same kind of concerns. I've not seen that before. It would
8 be painful and it's unusual. If the abuse is oral, you know,
9 the child's being abused orally, it would be a very unusual
10 thing for a perpetrator to say, you know: Chew my penis when
11 it's in your mouth.

12 Q. So we'll get back to the list. But these details that
13 don't make sense, when you see a detail that doesn't make
14 sense, is that a red flag?

15 A. It's a red flag, and in the forensic interview, it needs
16 to be explored more to try to understand what is happening at
17 that point.

18 Q. You mean the person doing the interview should follow
19 up?

20 A. Try to -- exactly. Try to follow up to gather more
21 information to try to understand an explanation for this very
22 unusual feature if abuse is actually occurring.

23 Q. All right. What about the description about a gummy
24 bear, like a gummy bear?

25 A. Yes. A child saying that it felt like a gummy bear in
26 my mouth is also an unusual feature. Not heard that before.
27 Gummy bears tend to be small and, you know, not shaped and
28 not the same size as a penis.

1 Q. All right.

2 A. So that will be an unusual descriptor.

3 Q. Mainly because of the disparity in size between the
4 gummy bear and a penis?

5 A. Correct.

6 Q. What other items you have on your list that are involved
7 in details that don't make sense?

8 A. Isabell describing it like a cheese -- like a cracker or
9 a cheese cracker. That has a different texture and shape and
10 taste. I have never heard a child describe oral abuse in
11 those terms, and that would have to be understood. Becky
12 describing it as a buttery thingy. That needs more
13 explanation. That's not a direct sort of description of oral
14 abuse that most children make. Isabell talking about it
15 tasting like strawberry, a faint strawberry taste. Also an
16 unusual feature. Arleth describing that it tastes like
17 smoke. Again, an unusual feature.

18 MS. FILO: Your Honor, may we approach briefly?

19 THE COURT: Yes.

20 (Whereupon, there was a discussion at the bench.)

21 THE COURT: Ladies and gentlemen, we're going to
22 take the morning recess at this time. We'll call you back up
23 before 11:00 o'clock, so hopefully by five 'til -- actually,
24 11:00 o'clock. I've got to address an issue. Please report
25 to the jury assembly room on the second floor. Thank you.

26 (Whereupon, the jurors were excused and the
27 proceedings were had outside the presence of the jury.)

28 THE COURT: Jury has left the courtroom. Counsel

1 are present. Mr. Chandler is present.

2 Ms. Filo, at sidebar you indicated that you had
3 concerns that this doctor was testifying about details that
4 aren't included in his apparently 70-page report. And is
5 that your concern, Ms. Filo?

6 MS. FILO: It is.

7 THE COURT: Mr. Madden.

8 MR. MADDEN: Your Honor, it's -- I'm not quoting
9 from a page or line here that I'm keeping it from counsel.
10 It's my belief that all of these items are referred to in the
11 various parts of Dr. O'Donohue's report. But I'll ask, Dr.
12 O'Donohue, are those things referenced in your report?

13 THE WITNESS: Yes, in the conclusions under the
14 logistical details, and they are all described in the report
15 and the summary of the narratives.

16 MR. MADDEN: Okay.

17 MS. FILO: Judge, maybe I could just state:
18 According to the document reviewed, it's my opinion that the
19 alleged abuse occurred during school time, the isolated
20 children, the details were impoverished, who was present. I
21 mean, I have no information about -- I mean, these are very
22 specific statements, and all of these inconsistencies have
23 been detailed in a chart that was provided in this report,
24 but this is -- I mean, none of that is referenced in the
25 logistical details.

26 MR. MADDEN: If I may respond, Your Honor?

27 THE COURT: Yes.

28 MR. MADDEN: Number one, the doctor previously

1 testified that he's received all of the CD's and transcripts
2 of the interviews. That is the sum total of the allegations
3 by these kids. And by the transcript, I mean, the transcript
4 of the preliminary examination, transcripts of the CIC
5 interview. Of course, some of this has to be supplemented by
6 elements throughout the trial, but I know all of these things
7 appear within the confines of what he was provided.

8 You have something to say before, Doctor?

9 THE WITNESS: Also, you didn't read the entire
10 paragraph on the logistical details. The last sentence says:
11 In addition, it is my opinion some of the details given are
12 not consistent with abuse, for example, the shape of the
13 objects given or taste or textures reported, and these need
14 to be considered, along with details that are consistent with
15 abuse.

16 THE COURT: The concern I have is that the
17 impression I'm getting is that the doctor's testifying about
18 these inconsistencies from all of these materials that were
19 presented to me, which is different than was presented in
20 this trial. So it has to be clear to the jury this is his
21 opinion based on all of the information that he has, number
22 one, about these areas he's talking about, the eight core
23 areas, are one area of inconsistencies, and now we're talking
24 about details that don't make sense.

25 The thing is, that I get the sense that he's
26 pointing out specific pieces of evidence, and the inference
27 is that this has been presented in the trial these are
28 inconsistencies. He's basically pointing out to the jury the

1 evidence. And I indicated to you, Mr. Madden, I didn't have
2 a problem with you using some examples to make the point, but
3 I think you have to let your doctor know that if you are
4 going into these types of details, Ms Filo is going to be
5 allowed to go into details without restriction, and this is
6 going to take a few days.

7 MR. MADDEN: Ms. Filo is entitled to cross-examine
8 what she wants.

9 THE COURT: Absolutely. But my concern is that
10 we're talking about his opinion about a core area and then
11 we're going over example after example. And he's talking
12 about the evidence, which is, you know, for the jury to
13 decide based on his opinion. So I think it's going beyond
14 what's necessary to form his opinion or give his opinion to
15 the jurors.

16 MR. MADDEN: Your Honor, I disagree with the Court.
17 I need to be able to establish a basis for his opinion. His
18 opinion means nothing without indicating what it's based on,
19 and I'm not using everything. I think we've done probably on
20 this particular subject about half of the items I wanted to
21 discuss. These items don't take a long time to discuss.

22 MS. FILO: But the problem I have, Your Honor, we
23 addressed this in motions in limine. The doctor is not
24 entitled to testify as to the veracity of the children.
25 Not -- I mean, that is -- that much is clear. So his opinion
26 about whether they are telling the truth or not is not
27 admissible in this trial.

28 MR. MADDEN: He's --

1 MS. FILO: May I finish, Mr. Madden?

2 So we talked specifically about whether or not
3 inconsistent statements could be presented to the jury, and
4 what we talked specifically about was in the context of:
5 Should it be considered in -- you know, in the grand scheme
6 of the allegations? Yes. But I made this motion in limine.
7 It is not outside the province of the jury to determine
8 whether these inconsistencies occurred. What's happening now
9 is Mr. Madden is presenting facts as inconsistencies that
10 were never testified to at this trial and are not part of
11 this record.

12 MR. MADDEN: That's incorrect. To be begin with,
13 the CIC interview, tapes of all five of the children, are
14 part of the record.

15 THE COURT: Well, that's one piece of evidence.

16 MR. MADDEN: Very significant one.

17 THE COURT: Well, but he has before him, or he's
18 been presented a lot of information that isn't evidence. I
19 guess my concern is that your expert could testify and you
20 could use examples to make his point, but I think we're going
21 beyond the point of necessity.

22 MR. MADDEN: I think the Court is concerned with
23 the volume of the examples.

24 THE COURT: Exactly.

25 MR. MADDEN: All right. Let me sit down with Dr.
26 O'Donohue at the recess here and see if I could trim this
27 back a little bit to try to address the Court's concern.
28 Let's see how it works out.

1 THE COURT: And I think it's important that the
2 doctor or yourself sit down with Ms. Filo and point out in
3 his report where all of this information is coming from,
4 because it seems like it's a little unclear to her. In
5 fairness to her, I think that's important.

6 So we'll recess until 11:00 o'clock.

7 (Whereupon, a brief recess was taken.)

8 THE COURT: Record will reflect the jury is present
9 in the courtroom, both counsel and Mr. Chandler is here, as
10 well as our witness is on the witness stand.

11 And, Mr. Madden, you were continuing with direct.

12 MR. MADDEN: Thank you, Your Honor.

13 BY MR. MADDEN:

14 Q. Dr. O'Donohue, I apologize. I distracted myself. We
15 just concluded which category?

16 A. The one about details, second category.

17 Q. So we haven't covered impoverished narratives yet?

18 A. Correct.

19 Q. Let's move to that. What did you mean by impoverished
20 narrative?

21 A. Um, when children are sexually abused, they usually tell
22 detailed narratives that is consistent with the major
23 features of sexual acts. An impoverished narrative would be,
24 for example, a vague description like: He molested me. Not
25 describing any of the details of the alleged molestation.
26 Vague, non-detailed narrative could be something like:
27 Something was placed in my mouth and something came out of it
28 later on. Very impoverished.

1 It's not describing the friction that is usually
2 necessarily related to the ejaculation and abuse. It's not
3 usually describing kind of the changes and the repeated acts
4 associated with ejaculation, the amount of time associated
5 for the male to ejaculate, et cetera. Usually, children --
6 because again, they've never experienced something like this,
7 this is horrible for them, but they are attending to these
8 details and reporting it.

9 Q. All right. So the fact that details that you would
10 expect are not there, that's what you mean by impoverished
11 details?

12 A. Yes.

13 Q. All right. So you certainly wouldn't expect the child
14 to describe an unknown sexual act using adult words in
15 detail; correct?

16 A. Correct.

17 Q. So it's quite possible for a child, or it's -- it would
18 be normal for a child to be able to give a detailed account
19 in their own words?

20 A. Correct.

21 Q. All right. And would that in part depend on the skill
22 of the person who was interviewing the child?

23 A. Yes.

24 Q. Did you form an opinion concerning whether or not the
25 children in this case gave impoverished details?

26 A. Yes, with the exception of Arleth, that was my view.

27 Q. So you don't believe that Arleth gave -- you would not
28 criticize Arleth's narrative as impoverished?

1 A. Correct.

2 Q. You have other comments later about Arleth; correct?

3 A. Correct.

4 Q. All right. I believe the next category I would like to
5 talk about would be isolation or lack of good isolation.

6 What do you mean by that?

7 A. Child abusers know that child abuse is wrong, that it's
8 a crime, that it highly stigmatizes an act. They attempt to
9 isolate the victims so that they are not discovered kind of
10 in the act, no witnesses, that sort of thing.

11 Q. And is there abundant literature discussing the issue of
12 the isolation in child molestation?

13 A. Yes.

14 Q. So concerning this case, the allegations in this case,
15 could you give me some examples of what you would consider to
16 be lack of good isolation?

17 A. Yes. There was some isolation occurring in terms of
18 taking the child into a classroom. That was part of the
19 allegation; right, with no one else present. Sometimes some
20 of the children reported that the door remained open.

21 Sometimes again the children --

22 MS. FILO: Actually, objection, Your Honor. That
23 is not part of the record in this case.

24 THE COURT: Sustained.

25 MR. MADDEN: All right.

26 THE COURT: You may continue with your answer.
27 That portion is stricken.

28 MR. MADDEN: That's fine.

1 THE WITNESS: The children -- only Arleth reported
2 that she was told by Mr. Chandler not to tell anyone. That's
3 part of the isolation, to try to make sure no one else hears
4 about this.

5 BY MR. MADDEN:

6 Q. So the subject of -- let's talk about this telling a
7 child not to tell. Does that take different forms in your
8 experience and in the literature?

9 A. Yes. Sometimes it's a threat. Sometimes it's a bribe.
10 Sometimes it's a simple instruction: Don't tell anybody.
11 It's our secret.

12 Q. But the general idea is obviously not to have a child
13 disclose what just happened?

14 A. Correct.

15 Q. All right. And does the subject of the blindfold in
16 this case apply to the area of not good isolation?

17 A. Yes.

18 Q. How so?

19 A. One, the children usually reported putting the blindfold
20 on themselves as opposed to Mr. Chandler putting it on. That
21 could allow some, you know, imperfect, you know, placement of
22 the blindfold in terms of restricting vision. They also
23 reported that there was no test or anything afterwards to
24 make sure they couldn't see anything, you know: How many
25 fingers am I holding up? Anything like that.

26 They reported various substances being used as a
27 blindfold. Sometimes things like scarves. That again may
28 not, you know, be actually, you know, good at restricting

1 vision. So again, there was no real thorough description of
2 a child's vision being restricted and being tested in a way
3 that's, you know, 100 percent sure that they wouldn't see
4 what was happening.

5 Q. So, for example, having children affix or apply their
6 own blindfold is a little casual for someone about to molest
7 them; right?

8 A. I would say so, yes.

9 Q. And likewise, someone telling a child to take their
10 blindfold off and then be doing things such as pulling up
11 their pants or zipping their pants or hiking up their pants,
12 that would be a little casual for a person who just
13 blindfolded a child and molested them; right?

14 A. Right. That would be the same sort of lack of typical
15 care that a molester would take in terms of when the
16 blindfold was removed. Correct.

17 Q. After the molest, is it your experience that not getting
18 caught is of prime importance for someone who is molesting
19 someone?

20 A. Yes.

21 Q. All right. Let's move to another area. Are there
22 various types of approved interviewing techniques for
23 forensic interviews of children suspected of being victims of
24 sexual abuse?

25 A. Yes, there is protocols out there.

26 Q. That's what a protocol is?

27 A. Yes.

28 Q. All right. And there -- how many are there?

1 A. Um, about six to eight, depending on how you -- what
2 criteria you want to use to define a protocol.

3 Q. Six to eight valid protocols are typically used
4 throughout the country?

5 A. Yes. Although these even often have much missing
6 psychometric information, like the sensitivity and
7 specificity, how accurate they are, but six is the field
8 tends to generate --

9 Q. Notwithstanding the protocol that a particular
10 jurisdiction is using, are there generally accepted poor
11 interviewing techniques versus generally accepted good
12 interviewing techniques?

13 A. Yes.

14 Q. That would go across all protocols; correct?

15 A. Yes.

16 Q. All right. So could you generally describe what good
17 interviewing techniques involve?

18 A. Major principle is establishing good rapport; major
19 principle is setting appropriate ground rules, like: It's
20 okay to say I don't know. Special importance of the truth,
21 making sure they know what the truth means. Not asking
22 leading questions. Not asking repetitive questions. Not
23 using conformity press like: You said this before. Or:
24 Tommy said Bobby said this. What about you? Not
25 disconfirming what the child says. Not --

26 Q. What does disconfirming mean?

27 A. Just telling the child that what they said was wrong.

28 Q. Not accepting a child's answer?

1 A. Correct. Not using repeated questions. And another set
2 of important principles is relying, especially in the
3 beginning of the interview, on open-ended questions. You
4 want the child to tell a narrative. You want the child to
5 kind of respond: Tell me everything you could remember about
6 what happened. Could you tell me more? Is there anything
7 else you remember? Did anything else happen next? As
8 opposed to close-ended questions: Did he touch you? Did he
9 touch you on your knee? Did that hurt? These are yes/no
10 questions, and the research has shown that children make more
11 mistakes, provide much more erroneous information to
12 close-ended questions than to open-ended questions.

13 Q. Somewhat easier for a child to answer closed-ended
14 questions; right?

15 A. Yes. It's easier because it's a yes/no as opposed to
16 filling in all of the blanks in a narrative. Yes.

17 Q. Yes, no, or multiple choice; right?

18 A. Correct.

19 Q. As opposed to writing an essay or having to use your own
20 words to describe something?

21 A. Correct.

22 Q. All right.

23 A. Another principle associated with good interviewing is
24 to explore alternative hypotheses and try to clear up
25 inconsistencies; try to clear up any gaps in detail; try to
26 make any -- to make sense out of the children's statements
27 that don't make sense. Some of the things I talked about
28 before. Inquire more.

1 Q. So would the opposite of that be a rush to judgment?

2 A. Yes.

3 Q. Deciding early on what happened and looking for ways to
4 confirm your conclusion?

5 A. Yes.

6 Q. Not keeping an open-mind?

7 A. Not being objective and exploring both incriminating and
8 exculpatory hypothetical. That's the way Ceci and Cornell
9 talk about it. Yes, looking at both sides.

10 Q. And who are Ceci and Cornell?

11 A. Stephen Ceci is a noted psychologist who wrote a very
12 influential book, *Jeopardy in the Courtroom*, about
13 suggestibility and allegations. He published dozens of
14 articles on child abuse allegations and false memory and --

15 Q. Suggestability of children?

16 A. Suggestability of children, proper interviewing
17 techniques.

18 Q. All right. So I think you mentioned a lot of these when
19 you talked about the good interviewing techniques. But bad
20 interviewing techniques would include?

21 A. The opposite of those things. Not doing those things,
22 yes.

23 Q. Did you find poor interviewing techniques in this case?

24 A. Yes. I found a reliance on close-ended questions as
25 opposed to open-ended questions and listening narratives. I
26 found a lack of following up on the sort of problems, trying
27 to resolve these inconsistent statements, attempting to fill
28 in the gaps on impoverished narratives. Attempting to

1 understand children's features of their allegations that
2 restrain logistical details.

3 Q. So what is the net effect of using poor interviewing
4 techniques in forensic interviewing of children?

5 A. They are -- the children's allegations are less clearly
6 understood, and rival hypotheses exist to explain these
7 allegations. So they are what we call confounded, the
8 subject of multiple interpretations.

9 Q. And that effect could be avoided if you ensure that
10 you're using proper interviewing techniques; correct?

11 A. It could be minimized. Sometimes it's just very
12 difficult to achieve these ends, but it's an attempt to
13 minimize that unwanted outcome.

14 Q. So again, you found in this case that the poor
15 interviewing techniques were seen throughout the forensic
16 interviews of these children?

17 A. Yes.

18 Q. Let's talk about outside contamination. What does that
19 mean?

20 A. What adults have talked to the children about, the
21 possibility of them being abused, or when others have talked
22 to the child, for example, other children, and this could
23 influence the children's statement. So we're not just
24 getting a child being a historian of events that actually
25 occurred when they are recounting the narratives, but we're
26 getting a child influenced by an adult, and this influence by
27 the adult could be deliberate or not deliberate.

28 Q. So the most well-meaning and loving adult could wind up

1 causing a poor forensic interview?

2 A. Unintentionally by asking repeated questions or leading
3 questions or also a poor meeting with an adult. For example,
4 another form of outside contamination, when a perpetrator
5 says: Don't ever tell anybody. If you ever do tell
6 somebody, I will hurt you, your mother, or your dog. Now the
7 child's report also is not an accurate historian by it being
8 impeded by that threat from the perpetrator. Their statement
9 is not a description. Their statement could be something
10 like nothing happened because they are afraid of the
11 perpetrator. So that's another example of outside
12 contamination.

13 Q. Did you find evidence of outside contamination in
14 forensic interviews of any of these children?

15 A. Yes, especially will Arleth.

16 Q. What is your opinion concerning Arleth?

17 A. There was a description of multiple days of talking to
18 her about this. There was some indication that at first she
19 was denying that anything occurred, and that her -- this was
20 her mother talking to her about this, and that over these
21 days her statement changed and that could be concerning.

22 Q. And with respect to Arleth, there was also evidence of
23 her being questioned by an older cousin?

24 A. Correct.

25 Q. If I were to tell you that the older cousin testified at
26 this trial and acknowledged that she had to help her cousin
27 with some of the words to describe the molest, would that be
28 consistent with your opinion concerning evidence of outside

1 contamination?

2 A. Yes. There is two possibilities: There is benign
3 helping, giving the child vocabulary to things that they
4 don't have; but the other possibility is that, quote/unquote,
5 help could be suggestive. That the cousin could influence
6 the report by the words she suggests, by her reactions to
7 certain statements.

8 Q. So if you have outside contamination in forensic
9 interviews, is there anything you could do to unwind the
10 damage?

11 A. You can't unwind the damage, but you need to ask in the
12 forensic interview the child's memories of those
13 conversations. So in this case, Arleth's memory of her
14 conversation with the cousin and Arleth's memory of the
15 conversation with the mother. And sometimes you get very
16 benign information from the child, like: My mother just
17 asked me did anything happen, and then I told her the whole
18 story.

19 Sometimes you get less benign things: My mother
20 said did anything happen, and I said no. I said no 50 times
21 because she kept asking. She seemed disappointed about it.
22 She said: You know, I know this is hard to talk about. I
23 will take you to McDonald's if you tell me, and then finally
24 I told her. That is more concerning because, again, we have
25 about 120 peer-review studies showing that repeated
26 questioning, suggestibility, awards could give rise to false
27 allegations and false memories.

28 Q. Tell me a little bit more about that.

1 A. People -- scholars in the '70s got interested in how
2 children could make false allegations because there was some
3 high-profile cases where clearly false allegations were made.
4 So they tried to understand this.

5 The view wasn't that these children are lying.
6 They are intentionally telling false information. The view
7 is there is something going wrong with their information in
8 processing that. They would say things, for example,
9 fantastical claims that we know are not true: I was abused
10 in a secret room below a toilet, and that witches were flying
11 around the room while I was abused. I was taken in a plane
12 over the ocean and abused. Babies were fed to sharks. We
13 knew a lot of these features were false because they were
14 fantastical. Researchers try to understand how could
15 children -- but these children were not lying. They were
16 convinced these things happened to them.

17 Researchers started doing studies to try to
18 understand what could go wrong with their information
19 processing that children could have these false memories,
20 make these false allegations. So they started looking at
21 things like leading questions, suggestive questions,
22 repetitive questioning, conformity press: Bobby said this.
23 Tommy said this. Sue said this. What about you?
24 Disconfirmation, subtle re-enforcement, you know. Sort of:
25 Now that's good that you told me that. You are being a good,
26 you know, person that you told me that kind of thing.

27 And the typical paradigm is to have a child
28 experience something and randomly have a group of children

1 experiencing something and randomly assign half to a
2 condition that is hypothesized, non-biasing, asking
3 reasonable questions: Tell me what happened. And the other
4 half are assigned a potentially biasing, you ask repeated
5 questions. You ask suggestive questions. You disconfirm.

6 And they found in these studies that the younger
7 the child, the more likely they will have this interference
8 and their information processing and have false memories and
9 make false allegations. And some of these occurred at a very
10 high rate. Eighty to 90 percent will say they saw something
11 that did not happen.

12 They've done research where mothers, for example,
13 have a particular large influence on children in terms of
14 forming false memories. So in general, these are these large
15 bodies of research showing that children are highly
16 suggestible. Again, there is research on even adults are
17 suggestible. It's not confined to children. That is
18 Elizabeth Lawson's (phonetic) research at Irvine.

19 Q. Is there any debate in the scientific community or the
20 scientific literature whether or not children are
21 suggestible?

22 A. No.

23 Q. I will move to another area that you addressed in your
24 report. That is the issue of stake. You addressed it, but
25 what is your -- what does stake mean?

26 A. I said in my report that it -- there was no stake
27 observed that an adult or someone else, but particularly an
28 adult in their life, has a vested interest in the allegation.

1 So, for example, in a custody dispute, because one of the
2 parents have a vested interest in gaining custody, more
3 visitation, and therefore an allegation could help them with
4 their object -- with their objective, and I initially saw
5 that there was no stake. I couldn't see any stake by any
6 adults in this case.

7 Q. All right. If I were to tell you subsequent to you
8 authoring this report, the parents of three of the five
9 children have filed civil lawsuits for money damages, would
10 that modify your -- change your opinion about whether or not
11 there might be potential stake issues in this case?

12 A. Yes.

13 Q. On the other hand, you would agree that any stake
14 interest presently there were not applied to anything that
15 was said prior to those lawsuits being filed?

16 A. Correct.

17 Q. Okay. However, if I were to ask you to assume that all
18 of those lawsuits were filed before the three children
19 testified in this case, you would consider stake is something
20 that needs to be considered; correct?

21 A. Yes.

22 Q. All right. Then finally, I would like to talk about
23 spontaneous outcries. You discussed this in your report.
24 What does spontaneous outcry mean?

25 A. Outcry is the first reporting, the very first time a
26 child reports it, and it being a clear sexual abuse
27 allegation. And spontaneous means it comes from them. They
28 just out of the blue tell their mother or tell a friend, you

1 know: Mr. X has been touching me in bad ways.

2 Q. I would like you to limit this response just to your
3 general opinion based on your experience with 2,000 children
4 and your experience in your clinic and your teaching and
5 education. Generally speaking, is there a difference
6 between -- what is the opposite of spontaneous outcry? I
7 guess that is a better question.

8 A. A first reporting that occurs when an adult or someone
9 is questioning the child about the possibility of abuse.

10 Q. So in terms of reliability, if I'm understanding this
11 correctly, by definition, a spontaneous outcry is seeing it
12 in a much different way because there is no prompting?

13 A. Correct. And there is no possibility of this outside
14 contamination, poor interviewing technique, because this
15 child spontaneously without any adult bringing up the
16 questions, questioning them, responding in a certain way to
17 their answers, so you don't have any worry about that. So
18 generally regard is more reliable.

19 Q. In the example, most simplistic form would be: Mr.
20 Jones touched my wee-wee?

21 A. Spontaneously. Again, when no one is questioning about
22 that exactly. There is no news reports about Mr. Jones.
23 There is no media reports. There is nobody saying bad things
24 about Mr. Jones. It just comes out of the blue, yes, that's
25 spontaneous.

26 Q. And forensic interviews are potentially problematic with
27 respect to spontaneous outcries?

28 A. If the child has not made an allegation before the

1 interview, yes. If the first -- if the outcry, the first
2 reporting occurs in an interview, then that wouldn't be a
3 spontaneous outcry.

4 Q. That is one of the reasons why it's so important for
5 forensic interviews to be done using proper interviewing
6 techniques; correct?

7 A. Yes.

8 Q. The fact that a police officer has been trained on the
9 difference between good interviewing and bad interviewing
10 techniques, does that in your experience ensure that they are
11 going to be using good interviewing techniques in the future?

12 A. No, it doesn't ensure. Increase the likelihood, but
13 doesn't entail --

14 Q. Within the scientific community, are there
15 recommendations concerning how police departments should
16 operate with officers who have been properly trained? In
17 other words, should there be some sort of follow-up or
18 evaluation?

19 A. I don't know about in police departments. I'm not an
20 expert about police departments. But in the field in
21 general, it is.

22 Q. In the field in general involved in therapy and doing
23 what?

24 A. Doing forensic interviews, yes.

25 Q. Okay. And what does that follow-up involve in the
26 community?

27 A. Keeping up with the literature. See if there is
28 protocols that have changed. Making sure that you keep

1 following the protocols. Having peer review to look at the
2 protocols to see if -- how close you are saying to them.

3 Q. Tell me a little bit about peer review when it comes to
4 what you talk about seeing and hearing to what you are
5 supposed to be doing?

6 A. The interview should be videotaped and, you know, so
7 other people who are trained can look at these videotapes and
8 could give you feedback. We do that in my clinic, to say,
9 you know, maybe here's another idea how you could have
10 handled that. Or at this point, it was difficult, but maybe
11 you were asking a repeated question at this time. Maybe if
12 you did this, you could have asked open-ended questions.
13 Their quality improvement that you continually try to make
14 sure you're not slipping back to any bad habits.

15 Q. All right. Okay.

16 MR. MADDEN: I have no further questions at this
17 time.

18 THE COURT: Okay.

19 MS. FILO: Your Honor, may we approach?

20 THE COURT: Sure.

21 (Whereupon, there was a discussion at the bench.)

22 THE COURT: Ladies and gentlemen, we're going to
23 take the noon break at this time. I will order all members
24 of the jury to report to the jury assembly room on the second
25 floor at 1:30, and at that time we'll continue with the
26 doctor's testimony. Thank you.

27 We'll be in recess until 1:30.

28 (Whereupon, the Court took the noon recess.)

1 AFTERNOON PROCEEDINGS

2 THE COURT: Thank you, ladies and gentlemen.
3 Record will reflect all members of the jury are present, both
4 counsel are present, Mr. Chandler is present in the
5 courtroom, as well as our witness is on the witness stand.

6 Ms. Filo, you were going to begin cross.

7 MS. FILO: Thank you, Your Honor.

8 CROSS-EXAMINATION

9 BY MS. FILO:

10 Q. Good afternoon, Dr. O'Donohue.

11 A. Good afternoon.

12 Q. Dr. O'Donohue, could you tell me what your hourly rate
13 is?

14 A. It's \$450 an hour for all work and half that for travel.

15 Q. Okay. So that's the rate you charged in this case?

16 A. Correct.

17 Q. Approximately how many hours have you spent working on
18 this case to date?

19 A. Between 40 and 50.

20 Q. So that's not at all my strong suit, but \$18,000 total;
21 is that about right?

22 A. I think it's somewhat higher. I think it's around
23 \$20,000.

24 Q. \$20,000. What about for courtroom testimony? What is
25 your hourly or what is your charge for courtroom testimony?

26 A. Same rate.

27 Q. Same rate. So today's billing will be added onto the 20
28 incurred?

1 A. No. My estimate included that in that time.

2 Q. Okay. So, Dr. O'Donohue, unless your findings are
3 helpful to the defense, you aren't called as a witness to
4 testify on their behalf; right?

5 A. Um, I would assume the lawyer wouldn't call me if it's
6 not helpful. That's correct.

7 Q. Okay. You've served as an expert witness in
8 approximately how many cases?

9 A. My life?

10 Q. Yes.

11 A. Probably 150 to 170.

12 Q. And approximately what percentage of those cases have
13 been on behalf of defense?

14 A. Uh, the vast majority; 99 percent of those.

15 Q. Have you ever written a report for the defense where
16 you -- where ultimately it wasn't used in court?

17 A. Yes.

18 Q. And you -- the case hasn't proceeded to trial or you
19 haven't been called as a witness?

20 A. Both.

21 Q. Okay.

22 Dr. O'Donohue, I would like to ask you some
23 questions about your testimony from this morning. You sort
24 of started by talking about inconsistencies in the girls'
25 disclosures as areas that were problematic; is that right?

26 A. Yes.

27 Q. Okay. So I just want to make sure you are not here and
28 it would be unethical for you to testify that these

1 allegations are false?

2 A. Correct.

3 Q. Okay. And all you can say is that these are things that
4 people might want to consider in evaluating a child's
5 allegation; is that accurate?

6 A. That's not all I could say, but it's part of what I
7 could say.

8 Q. Sorry. That's what I meant. I mean you agree with me
9 that some children -- what you wrote in your report, some
10 children can experience multiple biasing influences and
11 continue to provide very accurate reports; is that right?

12 A. Correct.

13 Q. Okay. And the presence of bias in one question does not
14 mean that the entire interview was contaminated; correct?

15 A. Correct.

16 Q. Okay. And you have some -- you talked in your report
17 about these sort of ways in which you should, or we can look
18 at a forensic interview; correct?

19 A. Correct.

20 Q. It is your opinion that most allegations of child sexual
21 abuse are true?

22 A. Is that a question? Sorry. I don't --

23 Q. Yes.

24 A. Yes, it is my opinion.

25 Q. Okay. And you've actually written that that abuse is
26 actually far -- sexual abuse is far more frequent than even
27 the general population would know or believe?

28 A. Correct.

1 Q. So you talked a little bit about the inconsistencies of
2 the kids, and I want to ask you about those inconsistencies.
3 You said that Isabell -- you talked first about Isabell and
4 some of the inconsistencies in her various reports; is that
5 right?

6 A. Correct.

7 Q. And you talked about interview one, interview two,
8 interview three, and her preliminary testimony; is that
9 right?

10 A. Correct.

11 Q. Okay. So I just want to make sure that I have that
12 correct. Interview one is when the patrol officers responded
13 out to the scene?

14 A. Yes.

15 Q. Interview two was a detailed videotaped interview with
16 Det. Pierce?

17 A. Correct.

18 Q. Interview three was a very brief interview with Det.
19 Pierce? I think he was primarily asking her about the chair
20 that she sat in; is that right?

21 A. Correct.

22 Q. And preliminary hearing testimony was when she came in
23 and testified in court; right?

24 A. Correct.

25 Q. So you said that in interview -- and when you put
26 together this sort of chart of these inconsistencies, what is
27 your purpose?

28 A. To show the number of inconsistencies and how they are

1 inconsistent.

2 Q. So you talked about -- strike that.

3 You actually scoured the record for what you
4 thought were the most important inconsistencies; right?

5 A. Well, I wouldn't use the word "scoured." When I read
6 the record, these were the ones that I saw.

7 Q. These were the inconsistencies that you thought were
8 worthy of putting in this report?

9 A. Yes.

10 Q. Okay. So you talked about the importance of these
11 inconsistencies because you said that children who are
12 victims of child sexual abuse will remember these details
13 because they are traumatic?

14 A. Yes.

15 Q. And that they are sort of imprinted in their mind;
16 right?

17 A. I didn't say imprinted in their mind, but they
18 remembered.

19 Q. Because the events are traumatic?

20 A. Yes.

21 Q. They are memorable?

22 A. Yes.

23 Q. Okay. So, Dr. O'Donohue, you would agree with me that
24 the children in this case didn't realize they were being
25 abused; right?

26 A. That's an interesting question. I think some did not;
27 correct. That question wasn't asked directly of the
28 children, but I think that's a reasonable inference to make.

1 Q. Okay. So it is a reasonable inference; right, that
2 these kids didn't -- they didn't know that this was a -- I
3 mean -- let me start over.

4 Let's assume these allegations are true, that the
5 defendant blindfolded children and either touched them
6 inappropriately or put his penis in their mouth, by a
7 duplicity, by blindfolding them, they didn't know what was
8 happening to them; right?

9 A. Correct.

10 Q. So they wouldn't have the kind of memory that you're
11 talking about because they haven't experienced that kind of
12 traumatic event; right?

13 A. That's partially correct.

14 Q. Why is it only partially correct?

15 A. Because children also have the ability to remember other
16 unusual events as opposed to mundane events. Like, what they
17 have for breakfast in the morning. The teacher blindfolding
18 them and placing objects in their mouth, it would be a very
19 unusual, salient event. Also, some of the children reported
20 they didn't like that. Even when they didn't realize that it
21 was sexual abuse, they thought it was hurtful. And children
22 were -- remember, there is other pathways besides sexual
23 abuse where children -- where an event becomes salient and
24 remembered.

25 Q. Okay. But you would agree with me that when we talk
26 about typical childhood sexual abuse; right? Stepfather
27 comes into a bedroom and wakes a child up and forces the
28 child to orally copulate him and then says: Don't tell

1 anybody. That child has vision, hearing? I mean all of the
2 senses that surround that event there, they are able to use;
3 right?

4 A. Yes.

5 Q. And they would be able to use that language?

6 A. Yes.

7 Q. Okay. You also talked about core inconsistencies or
8 core facts and peripheral facts; correct?

9 A. Correct.

10 Q. When you talked about core facts, you talked about who,
11 where, how often, acts, and what they feel like; is that
12 right?

13 A. Yes, those were examples, but those are the major
14 parameters, yes. How many times I think I also said.

15 Q. Right. How often I think is what I said. Same thing?

16 A. Okay.

17 Q. So you would agree with me that with the possible
18 exception of how often, those core facts in this case are all
19 consistent?

20 A. Let's see --

21 Q. They identified the perpetrator as Craig Chandler;
22 correct?

23 A. Correct.

24 Q. They have all said this happened in their classroom
25 while they were students of Craig Chandler's?

26 A. Correct.

27 Q. They have all described being blindfolded or otherwise
28 having their eyes closed?

- 1 A. Correct.
- 2 Q. They have all described items being put in their mouth?
- 3 A. Eventually, yes, all of them did. Yes.
- 4 Q. Yes. And they have all described with the best of their
- 5 ability that they have -- what that felt like to them?
- 6 A. Yes.
- 7 Q. So all of those core facts are entirely consistent?
- 8 A. Not the last one.
- 9 Q. You mean what it felt like?
- 10 A. Correct.
- 11 Q. Because they all used their own language to describe
- 12 this object; right?
- 13 A. Well, and sometimes it was inconsistent.
- 14 Q. Okay. You described peripheral facts or circumstances
- 15 as things like: the time of day, the clothing that they
- 16 wore, again, the color of the walls, things like that; right?
- 17 A. Correct.
- 18 Q. Okay. So I would like to ask you specifically about
- 19 Isabell. So you talked about Isabell -- I don't think you
- 20 were asked this on direct examination, so I will ask it. You
- 21 said in the first interview she was never asked the shape of
- 22 the object put in her mouth; right?
- 23 A. She doesn't describe it. Correct.
- 24 Q. Well, you said "not applicable;" right? The question
- 25 was not asked in the interview?
- 26 A. Correct. No, I'm just saying there was no description
- 27 of it in the interview.
- 28 Q. Okay. And then in interview two, she described it as

1 round? Interview three, she described it as round?

2 A. Yes.

3 Q. And in her preliminary hearing testimony, she described
4 it as curved?

5 A. Correct.

6 Q. So, Doctor, could you think of any object that occurs in
7 nature that is round that's not also curved?

8 A. No, but I could think of objects that are curved but not
9 round.

10 Q. Right. So that's a primary inconsistency?

11 A. It's inconsistent, yes. She could have said round.
12 It's not a major one, but it's inconsistently described.

13 Q. Would you expect even an adult to describe an object
14 with the exact same word every time?

15 A. She did two out of the three times. But, yeah, it is
16 inconsistent. I'm not making a big deal out of it, but it
17 is -- round and curved are not the same description.

18 Q. So you would describe anything as an inconsistency when
19 the exact same word isn't used?

20 A. Well, they are not the exact same word, no. I mean a
21 basketball is round and curved, but a hot dog is not round
22 and curved. They are different properties. They describe
23 different geometrical objects.

24 Q. Okay. And then you said also with Isabell that it
25 happened -- she's trying to describe how many times this
26 happened to her, and she says in the same sentence: It
27 happened one time on Friday, then it happened -- she says it
28 happened multiple times in addition to that. Once the

1 previous week, but multiple times before Christmas break;
2 right?

3 A. Right.

4 Q. That's all on the same sentence?

5 A. Right.

6 Q. And then she said it happened on Friday but multiple
7 times before Christmas break. And then she says in total it
8 happened more than ten times; right?

9 A. Correct.

10 Q. Aren't those -- what is inconsistent about that?

11 A. One time she gives much more specificity, saying ten
12 times. The other instances she's not saying ten times.

13 Q. Well, she doesn't say it happened ten times. She said
14 it happened more than ten times; right?

15 A. More than ten times, yes.

16 Q. Right. So each time she's saying this happened to me
17 more than once?

18 A. Yes.

19 Q. Okay. So you also talk about whether the object in her
20 mouth made her choke or gag; right?

21 A. Correct.

22 Q. Again, in interview one and two, it's just addressed;
23 right? It's just not addressed; right?

24 A. No. Interview one it's not addressed, but interview
25 two, she said the object made her choke.

26 Q. I have that as interview three. Am I on the wrong --

27 A. I have that as interview two.

28 Q. Okay. And then told her mother that the object didn't

1 make her choke. And then at her prelim, she said the object
2 did make her choke, and that she told her mother that; right?

3 A. Correct.

4 Q. So every time she was asked about it, she has said that
5 the item made her choke; right?

6 A. Let's see. Not according to her mother.

7 Q. Right. And if I told you that her mother testified that
8 if she said that, if she ever suggested that the item didn't
9 make her daughter choke, she was mistaken, she just misspoke,
10 that would take away that inconsistently entirely; right?

11 A. Yes.

12 Q. Okay. So you also asked about the taste of the -- or
13 talked about the taste of the object that Mr. Chandler put in
14 Isabell's mouth; right?

15 A. Correct.

16 Q. Okay. So you said in the first interview with the
17 patrol officers there was no information about that?

18 A. Correct.

19 Q. And in the second interview you said that it tasted like
20 strawberry; right?

21 A. Right.

22 Q. Okay. So, Dr. O'Donohue, I spent my lunch hour scouring
23 that transcript, and actually on page 11, lines 21 through
24 25, Isabell was asked by Det. Pierce: Does it have any
25 taste? Does it taste like anything? And she shakes her head
26 from side to side. And Det. Pierce says: No? Okay. And I
27 scoured through this entire transcript and didn't find even
28 the word "strawberry" in here.

1 A. I don't have the transcript with me. Let me see if I
2 could find it in my summary.

3 I don't see it in my summary. I can't respond to
4 that.

5 Q. Okay. So you would agree with me that could be an
6 inaccuracy?

7 A. Could be, yes. I don't have the transcript.

8 Q. Then in the third interview with Isabell, you said that
9 it did not taste like strawberry. You attributed that
10 statement to her?

11 A. Right.

12 Q. So I did the same thing with that interview, and the
13 only mention he heard of anything tasting like strawberry in
14 that third interview is when he asked her on page 7, lines 4,
15 5 -- essentially through 18, he asks her about other items:

16 "Like, other than the thing we have been talking
17 about, he used some other items. You remember
18 talking about that?

19 "Yes.

20 "Do you remember him putting something in your
21 mouth and you said it tasted like strawberry?

22 "Yeah."

23 So she's talking about something totally different?

24 A. Well, she was asked if she remembered him putting
25 something in her mouth that tasted like strawberry, and she
26 said yes.

27 Q. Right. But they are talking about the other items;
28 right? I mean the question -- I will read it to you:

1 "Do you remember what the other items are? Other
2 than the item we're talking about, do you remember
3 what these other items are that he put into your
4 mouth? Were there other items?

5 "Something that did taste like something.

6 "Do you remember him putting something in your
7 mouth like beef jerky?

8 "No.

9 "Do you remember him putting something in your
10 mouth like strawberry?

11 "Yeah."

12 A. Correct.

13 Q. Not talking about the object that she's described as
14 round, sometimes hard, sometimes soft. This is a different
15 subject; right?

16 A. Well, that question is not clearly referring to the
17 other objects. At that point, it just says: "Do you
18 remember him putting something in your mouth that tastes like
19 strawberry?" And she said yes to it.

20 Q. It will be the question immediately preceding that was
21 the other objects; right?

22 A. She could view it as having that context; right.

23 Q. Regardless it can't be an inconsistency because she
24 never said in the interview that it tasted like strawberry;
25 right?

26 A. Well, again, I don't have the transcripts, but I thought
27 I saw that assertion.

28 Q. Okay. So, Dr. O'Donohue, with respect to Becky, you

1 said that you reviewed -- make sure I've got it.

2 The interview of Becky by Det. Pierce, and then
3 another interview of Becky, and then you did review the
4 interview of her mother; right?

5 A. Let's see. Interview of Becky, yes.

6 Q. Were you provided with notes from the principal who took
7 a statement from Becky almost immediately after these
8 incidents occurred to her?

9 A. No, I don't believe so.

10 Q. Handwritten notes that include quotations of what Becky
11 said happened to her?

12 A. I don't believe I was provided those. No.

13 Q. When she was talking about the gooey, salty stuff? No
14 notes?

15 A. I don't believe so.

16 Q. Okay. When -- so again, with respect to Becky, you
17 analyzed how it felt when he put the object in her mouth.
18 And it says in interview one and interview two, it was not
19 addressed?

20 A. Um-hum.

21 Q. And then in the prelim, it said it made her feel like it
22 was going to make her choke?

23 A. Yes.

24 Q. You find that as an inconsistency?

25 A. Yes.

26 Q. If she wasn't asked those questions, how could that be
27 an inconsistency?

28 A. Well, she was given plenty of opportunity to describe

1 what happened. This goes back to the open-ended questions;
2 right? The notion is that children don't respond simply to
3 close-ended questions like: Did it make you choke or not?
4 She was given an opportunity to describe what did happen, and
5 the point is that choking is a very salient thing that
6 children would remember and would tell about. And the fact
7 that she doesn't mention it in two interviews and only
8 mentions it in prelim, I think is an inconsistent report.

9 Q. Okay. So if she was asked the open-ended question and
10 she didn't provide the answer that she was choked, that's
11 what you would consider an inconsistency?

12 A. Right. She didn't mention a detail in one interview,
13 but then she mentions the salient interview in a subsequent
14 interview. Correct.

15 Q. So children -- particularly children -- do sort of
16 disclose more as time goes; right? Disclosure for them could
17 be a process; is that right?

18 A. Could be a process, but they could disclose more based
19 on a lot of variables such as how comfortable they are with
20 the interviewer, how close it is, you know, with respect to
21 time. And disclosing more doesn't's mean disclosing more
22 accurate information. That's the, you know, problem.

23 Q. Okay. With respect to Laurie, you put in your little
24 chart that in interview one, she talked about the item that
25 was on her foot, and she said marker, pen, or glue stick.
26 And then in interview two, top of scissors and glue stick,
27 and then in the prelim, she talked about a glue stick and a
28 pen; right?

1 A. Correct.

2 Q. So the only new item that ever got included there was in
3 interview number two, top of scissors?

4 A. Correct.

5 Q. But other than that, those are all consistent
6 statements?

7 A. Correct.

8 Q. I mean you listed that as a primary inconsistency?

9 A. Yes. I mean if you've given me presents, let's say, and
10 I am asked: What presents did you give me? And I say
11 basketball, radio, and shoes; right? And I'm asked again:
12 What presents did you give me? And I say a basketball,
13 radio, and a car. And I'm asked again, I say basketball,
14 radio, and shoes, it's pretty significant that in the second
15 interview, the second time I'm told -- I mention an entirely
16 different object than I did in two of the other interviews,
17 especially because top of scissors is nothing like a pen or a
18 glue stick.

19 Q. Okay. So you asked -- you analyzed whether she told her
20 mom about staying behind at recess. And in interview one,
21 she said she told her mom; interview two, she said she told
22 her mom; and then at the preliminary hearing, she said she
23 doesn't remember telling her mom; right?

24 A. Correct.

25 Q. You identified those as primary inconsistencies?

26 A. Yes.

27 Q. So the preliminary hearing was almost six months after
28 her first interview; right?

1 A. Yes.

2 Q. So it's inconsistent to say: I don't remember that now?

3 A. When you asserted before that you did tell your mom and
4 you remember, it's inconsistent. It may have a benign
5 explanation, maybe forgetting, but it's still inconsistent.

6 Q. I mean the -- she's like a seven-year-old little girl;
7 right? So for her six months is like a lifetime; right?

8 A. Um, isn't she more like nine?

9 Q. She is now.

10 A. Got you. Yeah, it's still inconsistent. Whether there
11 is a benign explanation is another matter, but it's
12 inconsistent. I could -- again, if you ask me, you know,
13 what did I do -- what school did I go to, or something, and I
14 could say this school. I went to this school. I went to
15 this school. And then if I say I don't remember which school
16 I went to, that's inconsistent; right? Now, it could have a
17 benign explanation. I could have forgotten, but, you know,
18 it's still not the same answer.

19 Q. So you're attributing it as an inconsistency, not a
20 failure of memory?

21 A. I'm saying it's an inconsistency. It's a separate
22 question of what caused that inconsistency and it could be a
23 failure of memory.

24 Q. Okay. So same thing when she says she was held back in
25 the classroom while the other kids went to recess.

26 Interviewed again, she says the exact same thing, and then at
27 the prelim she says that the yard duty supervisor brought her
28 back to the classroom to spend recess there; right?

1 A. Correct.

2 Q. So the only inconsistency is who brought her back to the
3 classroom?

4 A. Um, and what held back meant. She stayed in the
5 classroom versus somebody -- she left the classroom and then
6 was brought back there.

7 Q. You would agree with me, wouldn't you, that probably the
8 most salient fact to a child under this circumstance would be
9 that she missed her recess, not who got her there; right?

10 A. That would be another salient fact, yes.

11 Q. She's consistent about that?

12 A. Correct.

13 Q. You talked a little bit about Wendy, and you said that
14 the object in her mouth at some point she described like a
15 gummy bear?

16 A. Yes.

17 Q. But she immediately said right in that same sentence:
18 But it wasn't a gummy bear; right?

19 A. Correct.

20 Q. So the texture of a gummy bear, something kind of chewy,
21 it's entirely possible; right, that she's describing the
22 texture not the size?

23 A. Correct.

24 Q. Okay. So with respect to Arleth, you talked about
25 whether or not she saw Mr. Chandler's penis; right?

26 A. Correct.

27 Q. And you said at the preliminary hearing testimony she
28 didn't mention that. It wasn't addressed; right?

1 A. Correct.

2 Q. So, Dr. O'Donohue, are you aware that Arleth drew a
3 picture of what she saw at the preliminary hearing?

4 A. Um, I don't remember.

5 Q. Have you been provided with a copy of the drawing that
6 Arleth made?

7 A. I don't remember at this point.

8 MS. FILO: Your Honor, if I might have marked as
9 the People's next in order?

10 THE COURT: Yes, that will be --

11 MS. FILO: Sorry. This is a piece of binder paper
12 that has a drawing on the front of it. It still has the
13 preliminary hearing exhibit tab from May 22, 2012.

14 THE COURT: Okay. We'll mark that next in order.
15 I believe it's People's 17.

16 THE CLERK: It should be 24.

17 THE COURT: 24?

18 THE CLERK: Yes.

19 (Whereupon, People's Exhibit 24 was marked for
20 identification.)

21 BY MS. FILO:

22 Q. So, Dr. O'Donohue, I'm going to show you what's now been
23 marked as People's Exhibit 24. You've never seen any drawing
24 like that? That wasn't provided to you by the defense?

25 A. I don't believe so. No.

26 Q. And a very similar one that Arleth drew for the officer
27 in the course of her interview with him?

28 A. Sorry. What was the question?

1 Q. Sorry. There was --

2 MS. FILO: Rhonda, could I see People's Exhibit 7,
3 please?

4 Your Honor, may I approach?

5 THE COURT: Yes. Thank you.

6 BY MS. FILO:

7 Q. Again, Dr. O'Donohue, People's Exhibit 7, I'll represent
8 to you that that was the drawing that Arleth made when she
9 was interviewed by the detective in the case. You remember
10 her doing that? You saw that on the video; right?

11 A. Correct, yeah.

12 Q. And then at the preliminary hearing, she was asked again
13 to describe or -- sorry -- to draw what she saw and she did a
14 slightly bigger version in now People's Exhibit 24.

15 A. Okay.

16 Q. So your report had indicated that she wasn't asked what
17 she saw. But, I mean she was not only asked, she drew a
18 picture of it at the prelim?

19 A. That doesn't mean not asked. Doesn't -- it means not
20 applicable. I don't remember a clear statement describing
21 what she saw in the preliminary testimony.

22 Q. She just drew it?

23 A. (Shakes head up and down.)

24 Q. Yes?

25 A. She drew something, yes.

26 Q. Okay. And, for instance, you talked about the substance
27 that was in Arleth's mouth, and she said in the first
28 interview that it tasted bad. And then Noemi reported that

1 Arleth had told her it tasted like pee. And at the
2 preliminary hearing she said it tasted like pee; right?

3 A. Correct. Well, interview one she said first it doesn't
4 taste like anything, and then she said it tasted bad.

5 Q. Again, in the same sentence; right?

6 A. Or following one another, yes.

7 Q. Yeah. You would agree with me that, I mean, hopefully
8 she hasn't tasted it, but most people would say the taste of
9 pee is bad; right?

10 A. Correct, but they wouldn't say it didn't taste like
11 anything.

12 Q. Okay. So that level of inconsistency, each of those
13 inconsistencies that we've talked about, if they even exist,
14 there are, as you described, explanations for those
15 inconsistencies; right?

16 A. There are a range of explanations, possible
17 explanations. Part of my point is, again, the interview
18 failed to ask more questions to try to see which ones were
19 more relevant or not.

20 Q. Okay. So you're talking about the inconsistencies as
21 examples of potentially planted memory; is that correct?

22 A. No. I'm saying that planted memories or suggested
23 memories that lead, you know, to false accusations. False
24 memory tends to have more inconsistencies because they didn't
25 actually happen, so the child has less of a vivid memory of
26 that. So they have a harder time describing it consistently.

27 Q. Okay. So through the records of what you have been able
28 to review, what we've gone over and what you went over on

1 direct, those are sort of the best examples, examples you
2 found more worthy to put in your report of the
3 inconsistencies of the children?

4 A. Yes.

5 Q. Okay. Doctor, you would agree with me that in
6 evaluating a child or determining how to conduct an
7 interview, certainly the best practice is to meet the child;
8 right?

9 A. Yes.

10 Q. And you didn't meet any of these children?

11 A. Correct.

12 Q. Did you ever ask to meet with any of them?

13 A. No.

14 Q. Why not?

15 A. Um, my task that I was given is to evaluate the
16 allegations that they have made so far.

17 Q. Okay. So asked to evaluate what they've said to date?

18 A. Correct.

19 Q. All right. So you also talked about one of the things
20 you want to look at in a child's description of sexual abuse
21 is fantastical details; right?

22 A. Correct.

23 Q. What I think you described is being fed to sharks,
24 flying over the Pacific Ocean, things like that?

25 A. Correct.

26 Q. These disclosures contained none of those; right?

27 A. Correct.

28 Q. That's not something you considered to be a huge

1 indicator in this case of some problem in the disclosure;
2 correct?

3 A. Correct.

4 Q. So you also talked a little bit about impoverished
5 details, and you said other than Arleth, the children were
6 really -- that their details were lacking in some way?

7 A. Correct.

8 Q. In what way? What else could children who have been
9 blindfolded have described at their cognitive developmental
10 level that would have been anymore clear?

11 A. They could have more consistently described the taste
12 and shape of the objects that were placed on their mouth or
13 on their feet. They were often again, as we kind of went
14 over, inconsistent about that. They could have described
15 again more clearly the narrative from the beginning to the
16 end of their interactions. They could have added, you know,
17 kind of more spontaneous details about it. So it was -- for
18 example, if a key point is they could have described more
19 sexual details, that would be consistent, for example, with
20 oral sex leading to ejaculation.

21 Q. Okay. So the words that they were able to use: round,
22 gooey, about the size of a banana, at least two of the
23 children described spontaneously him putting his hand on the
24 back of their head and pushing their head forward; right?
25 Isn't --

26 A. Well, but your head went forward rhythmically. They
27 never reported anything like that. They reported pushing the
28 head forward, but not in any kind of rhythm, for example,

1 that's more consistent with oral sex.

2 Q. Well, Isabell actually demonstrated on the video,
3 putting that -- Mr. Chandler put his hand behind her head and
4 rhythmically pushed her head forward?

5 A. Yes, that one child did. Yes.

6 Q. And Wendy did the same; right?

7 A. Um, I don't remember that.

8 Q. So you think that otherwise their stories are
9 impoverished in detail?

10 A. Yes. For example, usually, you know, the reports were
11 more like: He put something in my mouth, and then, you know,
12 fluid, you know, came out. I'm not quoting, but, you know,
13 that was the kind of notion. And again, children who have
14 been abused with oral sex often report things like, you know,
15 the rhythm, the motion, they describe the motion's increasing
16 in intensity. They could describe often the -- they won't
17 use this word, but the penis pulsating, and this is, you
18 know, kind of not reported by these children.

19 Q. Okay. So children at this age level could talk about a
20 penis pulsating?

21 A. I'm not saying they use that word, but, you know, they
22 could describe some sort of throbbing or something like that.

23 Q. Like the item kind of shaking in their mouth?

24 A. Yes, could be one.

25 Q. Okay. And when you say that they don't describe
26 rhythmic, I mean children at that level would never be able
27 to -- I mean they don't know what rhythm is; right?

28 A. But again, I said not to use exactly these words. I'm

1 trying to convey to you in adult language that they could
2 describe it start out slow and then it went faster and
3 faster.

4 Q. Okay. You talked about -- you talked about it being
5 somewhat improbable that this would happen in sort of a
6 classroom setting; right?

7 A. I don't think so.

8 Q. That it -- you talked in your report about Mr. Chandler
9 guarantee no one would walk in; right?

10 A. I would say yes.

11 Q. Okay. So if I told you that in each occasion the
12 children reported that the door was locked, would that matter
13 to you?

14 A. Yes.

15 Q. You talked a lot about -- not a lot, but -- I'm sorry.
16 You mentioned on your direct examination some of this
17 behavior seems somewhat casual for your average child
18 molester?

19 A. The placing of the blindfold and taking off the
20 blindfold, yes.

21 Q. Right. You said that, you know, it would -- allowing
22 the child to do that would actually give the child the
23 opportunity to skew the blindfold or would make it possible
24 for a child maybe to peek or see; right?

25 A. It could, yes.

26 Q. At least one child described that exact thing happened;
27 correct?

28 A. Correct; one out five.

1 Q. Described as what she saw was being round with black
2 hair around it?

3 A. Correct.

4 Q. You said that one of the things that's important to
5 child molesters, they don't want to get caught; right?

6 A. Correct.

7 Q. Tell me a little bit more about what you meant by that.

8 A. That when they molest children, they take steps so they
9 won't get caught. They seclude the child. They often
10 seclude the child, not only for when the abuse is occurring,
11 but afterwards when the child is acting differently, you
12 know, acting harmed. They often tell or threaten the child
13 or bribe the child not to tell anyone about that. It is an
14 unusual feature in this case about putting a blindfold on a
15 child, or asking a child to put a blindfold on. That doesn't
16 happen in the typical case of child molestation.

17 But again, if the task were to -- if the object of
18 putting the blindfold on was to restrict them seeing a penis
19 was going into their mouth, the casualness that I'm talking
20 about is that he didn't take any steps to make sure that the
21 blindfold fit them well, that it was on so they couldn't see.
22 Didn't test to see that, you know, it was working. That they
23 couldn't see anything. And again, didn't give instructions
24 to the children to say: Keep it on. Keep it on while he
25 zipped himself or cleaned off or something. Children
26 reported they took it off themselves and he never gave
27 instructions about that.

28 Q. Okay. So he did actually seclude these victims; right?

1 A. If he took them alone in a room that was locked, yes,
2 with the door closed. Yes, secluded in that sense.

3 Q. And child molesters choose their victims very carefully;
4 right?

5 A. Yes.

6 Q. I mean, they don't molest every child they come in
7 contact with?

8 A. Correct.

9 Q. They choose certain ones?

10 A. Correct.

11 Q. Well, what do they look for?

12 A. Well, we don't know precisely, but they usually look for
13 children that they think won't tell; that are more
14 vulnerable; that maybe are more needy; that are having
15 problems; they could manipulate. Sometimes they are choosing
16 children that they are attracted to.

17 Q. So in this particular case, all girls; right?

18 A. Correct.

19 Q. No boys?

20 A. Correct.

21 Q. And each one of the victims in this case, at least I
22 would describe, is somewhat meek, would you agree?

23 A. You know, I only saw their behavior during the
24 interview, so I couldn't -- I'm not in a position to describe
25 their personality.

26 Q. What if I told you all of them but one have a parent
27 that doesn't speak English as a native language, would that
28 be a relevant consideration?

1 A. No.

2 Q. No?

3 A. No.

4 Q. Looking for children maybe who have special education
5 needs, something like that?

6 A. Yes.

7 Q. Child molesters going to extreme measures to cover their
8 tracks; is that right?

9 A. Most do, yes.

10 Q. They do actually build in defenses to what they are
11 doing?

12 A. What do you mean by defenses?

13 Q. They want to have an innocent explanation for their
14 conduct; right? We were playing, we were in the pool, we
15 were horsing around, we were playing the tickle game, these
16 sort of --

17 A. Rationales.

18 Q. -- rationales for their behavior?

19 A. Yes.

20 Q. Very common?

21 A. Yes.

22 Q. One of the things that is common to most of these cases;
23 right, is that they desensitize the child to what is
24 happening?

25 A. Yes.

26 Q. So in other words, playing the game in front of other
27 people, or making this a normalizing behavior is central to
28 getting that child to submit to what you are doing?

- 1 A. No.
- 2 Q. Not central?
- 3 A. No.
- 4 Q. Let me take it back. Certainly, could be accomplished
- 5 without that?
- 6 A. Correct.
- 7 Q. But it is part -- I mean that's part of the process;
- 8 right?
- 9 A. It could be a pathway, yes.
- 10 Q. Okay. You said that there were poor interviewing
- 11 techniques conducted or occurring in all of these interviews?
- 12 A. Did you say core or poor?
- 13 Q. Poor.
- 14 A. Yes.
- 15 Q. Okay. Now, was that throughout the interviews or there
- 16 specific examples?
- 17 A. Both.
- 18 Q. You would agree with me that you have never reviewed the
- 19 perfect interview?
- 20 A. Correct.
- 21 Q. Never happened?
- 22 A. Correct.
- 23 Q. Okay. Things like whether they build a rapport with the
- 24 child is one of the things you said was most important;
- 25 correct?
- 26 A. Correct.
- 27 Q. That was actually getting the child comfortable to
- 28 disclosing the information; right?

1 A. Correct.

2 Q. If they are not comfortable with you, they won't tell
3 you bad things happened to them?

4 A. Correct.

5 Q. You talked about whether or not the kids knew the
6 difference between a truth and a lie, for instance?

7 A. In my report, I did. Yes.

8 Q. Did any of these kids demonstrate any difficulty with
9 that concept?

10 A. No.

11 Q. And did any of them demonstrate any difficult with how
12 important it was to tell the truth?

13 A. I don't believe so. No.

14 Q. Okay. And all of them understood that they were talking
15 to the police; right, to investigate what's happened to them?
16 Each one of them was asked: What's happened to you and I
17 need to know that; right?

18 A. Yes.

19 Q. You talked in your report about disclosure inhibitions.
20 Are the kids inhibited from disclosing somehow?

21 A. Yes.

22 Q. Again, that would be a concern about whether or not
23 there is more out there to tell; right?

24 A. But not necessarily more abuse.

25 Q. But that's the primary concern; right?

26 A. It is a concern. Or again, a parent could say, you
27 know, go in there, and if you say X, Y, and Z, we'll take you
28 to McDonald's. That could -- if you don't say X, Y, and Z,

1 you know, we'll take you to McDonald's. So again, you are
2 looking for any of these external forces that the child could
3 feel. I can't talk about something because, you know, I will
4 get in trouble or somebody else will get in trouble.

5 You are right in the sense that often what you are
6 worried about is a threat from a perpetrator. So I'm not
7 going to tell you that my stepfather touches me because he
8 said he was going to hurt me. But you could also worry
9 about: I'm not going to tell you what my mother told me to
10 tell you these kinds of things because she'll get mad if I
11 tell you that.

12 Q. Would external forces be things like: Other children
13 are going to make fun of me on the playground?

14 A. Yes.

15 Q. I don't want to be a victim of sexual abuse because
16 other kids are going to say I'm -- I did bad things with the
17 teacher?

18 A. Yes. You are trying to find out anything that could
19 inhibit them telling you anything that is relevant. Yes.

20 Q. Okay. You talk about threats or bribes. That's a
21 little bit like: I will take you to McDonald's if you say
22 this; correct?

23 A. That's the bribe, and the threats is, you know, aversive
24 corollary to that.

25 Q. You have no evidence in this case that any threats or
26 bribery was used?

27 A. Right. Although they weren't asked directly about that.

28 Q. So you talked about open-ended questions; right? That's

1 the best way to get information?

2 A. Correct.

3 Q. And the officers did a lot of that in these interviews;
4 correct?

5 A. They did some of it. I won't say a lot. Most of the
6 responses were to close-ended questions as opposed to a free
7 narrative, you know, lasting, you know, dozens of sentences
8 telling the story. Most of them were answers to, you know:
9 What did it taste like? How many objects? What happened,
10 you know, next? More close-ended questions than the
11 recounting of the narrative.

12 Q. So once the child has said that he put something in my
13 mouth; right? I mean they spontaneous say: He put something
14 in my mouth, it would be inappropriately to say: Well, how
15 big was it?

16 A. Well, not inappropriate, but we find in research that
17 that could result in more inaccurate information. A better
18 question to say: Tell me all about that. Tell me everything
19 that you could remember. Could you remember more? Tell me
20 what happened before. Tell me what happened after. You are
21 trying to be very vague and therefore non-directive so the
22 child could then tell you as many details without you at all
23 asking these close-ended questions that lead to, you know,
24 the research shows more false information.

25 Q. Okay. So you talked about authority pleasing. Like
26 there was a need to please an authority figure; right?

27 A. Correct.

28 Q. These children all said no to certain questions; right?

1 A. Correct.

2 Q. So all of them were able to tell an interviewer no that
3 didn't happen?

4 A. Correct.

5 Q. With respect to leading questions, those are -- what's
6 your definition of a leading question?

7 A. When the question contains information that ought to be,
8 you know, only in the answer. So if I say, you know: He hit
9 you, didn't he? That is putting pressure for the yes answer
10 more than the no answer. Or, if I say to you: You went to
11 Florida. Tell me what the weather was like before you told
12 me you went to Florida, that would be leading.

13 Q. And you're aware that on cross-examination leading
14 questions are allowed; right?

15 A. Legally?

16 Q. Correct.

17 MR. MADDEN: Objection. That's not relevant to a
18 forensic interview, Your Honor, what goes on in the
19 courtroom.

20 THE COURT: I'll sustain the objection.

21 BY MS. FILO:

22 Q. So I would like to give you an example. I would like to
23 read this to you and could you tell me whether or not this is
24 leading:

25 "The times that you were alone with Mr. Chandler in
26 the classroom, those times were all before you saw
27 the whole class game; right?

28 "Answer: I don't remember. I'm not sure.

1 "Question: Fair enough. And last year you told
2 the Court that those times were before the
3 classroom demonstration; right?

4 "Answer. Yes.

5 "Question: Do you play the taste game in front of
6 the whole class?

7 "Answer: Yes.

8 "Question: All right. Because that's what you
9 practice with Mr. Chandler right?

10 "Answer. Yes."

11 Those are examples of leading questions; right?

12 A. Well, there were a lot of those -- kind of read them
13 fast. My mind wasn't working that fast.

14 MR. MADDEN: Your Honor, counsel advise these
15 questions were asked in a courtroom, not in a forensic
16 interview?

17 THE COURT: I think the question is simply: Was it
18 a leading question? And you could answer yes or no.

19 THE WITNESS: Which question? There were multiple
20 questions.

21 THE COURT: I think that's fair.

22 MS. FILO: Okay.

23 BY MS. FILO:

24 Q. So, for instance:

25 "Did you play the taste game in front of the whole
26 class?

27 "Answer: Yes.

28 "Question: Because that's what you practiced with

1 Mr. Chandler; right?

2 "Answer: Yes."

3 A. That's leading, yes.

4 Q. Because you're actually not only suggesting the answer;
5 correct?

6 A. Correct. It's leading if the child first didn't say,
7 that's what I practiced with Mr. Chandler.

8 Q. Right. Because you're assuming something that -- what
9 the child was doing with Mr. Chandler was practicing the
10 game; right?

11 A. Correct. If the child hadn't said that before, that if
12 the child said -- if you said to me first: I went to
13 Florida, I could then say: When you went to Florida, what
14 was the weather like? That's not leading; right? But if you
15 never said to me: I went to Florida. I say: When you went
16 to Florida, what was the weather like? That's leading.

17 In this example, if the child had not said: I
18 practiced the taste game with Mr. Chandler, that would be
19 leading.

20 Q. Okay. So I would like to give you a few other examples?

21 A. Could you do it slower a little bit? So one at a time?
22 Thank you.

23 Q. Sure, for instance, asking someone:

24 "You had to suggest words to her; right?

25 "Answer. Yes" --

26 MR. MADDEN: Your Honor --

27 MS. FILO: -- it could be --

28 MR. MADDEN: I'm going to object. These are

1 questions that --

2 THE COURT: What's the basis of the objection?

3 MR. MADDEN: Not relevant. These questions are
4 being asked in the courtroom --

5 THE COURT: Hold on.

6 MR. MADDEN: -- as evidence.

7 THE COURT: Mr. Madden, I will let you approach if
8 you want to argue your point.

9 MR. MADDEN: I'm sorry.

10 THE COURT: You want to come to sidebar?

11 MR. MADDEN: Yes.

12 (Whereupon, there was a discussion at the bench.)

13 THE COURT: Thank you, Ms. Filo. You are going to
14 continue.

15 MS. FILO: Thank you.

16 BY MS. FILO:

17 Q. Doctor, you would agree with me that fact-leading
18 questions make answers questionable?

19 A. I'm not sure what you mean fact-leading, but leading
20 questions makes the response questionable because it could
21 lead to more error. Yes.

22 Q. Okay. And in using your question with facts,
23 particularly to a child, is giving them information; is that
24 accurate?

25 A. Facts by definition to anybody would be giving them
26 information, yes.

27 Q. Okay. So if you said: What was the weather like in
28 Florida, that would be an appropriate question; right?

1 A. It's not leading.

2 Q. Not leading. That's what I meant to say. Sorry.

3 If you said: When you were in Florida, it was
4 raining and overcast and you had to carry umbrellas, you are
5 providing information in your question; correct?

6 A. Yes, so that could be leading.

7 Q. You talk also about conformity press; is that right?

8 A. Correct.

9 Q. Conformity press is kind of reminding kids of previous
10 statements; right?

11 A. Or previous statements that they made or other people,
12 other children, have made: Tommy said he was abused by Joe.
13 Sally said she was abused by Joe. Now what about you?

14 Q. So you have suggested that one of the flaws in the
15 interviews here was that inconsistent statements weren't
16 addressed?

17 A. Correct.

18 Q. So how do you address those inconsistent statements
19 without engaging in conformity press?

20 A. You ask for explanations of that. You don't in your
21 question imply that they should revert back to the previous
22 answer. So you could say -- here will be the difference.
23 Let's say you told me you went to Florida, then you told me
24 you didn't go to Florida. Conformity press would be: You
25 told me before you went to Florida, and you're not saying
26 that now? Why aren't you telling me what you first told me?
27 Okay.

28 Trying to clear up the inconsistencies doesn't have

1 that same demand characteristic. You could say: I heard you
2 say two different things: When you went to Florida and when
3 you didn't go to Florida. Could you help me understand what
4 you're saying here?

5 Q. Okay. So in this case, almost all of the officers that
6 did any of these interviews asked the children: Could you --
7 do you have any idea what it was that was in your mouth;
8 right?

9 A. Yes.

10 Q. And other than the words that they were able to use to
11 describe the object, not a single one of them could point to
12 a thing?

13 A. I don't understand your question.

14 Q. Not a single one of them was able to say: Well, I think
15 it was this?

16 A. Let's see. Um, none of the students -- none of the
17 students made a definite statement like: I'm pretty sure it
18 was a banana or something like that. Correct.

19 Q. Okay. I'm going to ask you about one last topic. You
20 talked about some studies where children were given
21 information by trusted sources and they incorporated that
22 into events that had actually happened and then presented
23 them as truth; correct?

24 A. Or they actually experienced that information. They saw
25 a clown come in a room and knock over a book. Yes.

26 Q. Right. So the one I remember is Mr. Science; right?
27 There is the experiment with Mr. Science, where the children
28 come in and they experience this kind of science experiment

1 and then they leave. And then a -- why don't you tell me.
2 You know better than I do.

3 A. Half the children, their mothers are told accurate
4 information about what happened in the science demonstration.
5 Half of the mothers are told some inaccurate information,
6 that they saw certain demonstrations that didn't occur and
7 then a wipe was on the side of their mouth and went into the
8 mouth and it tasted yucky. They had to put a wipe because
9 the science demonstration said they had something on the
10 face.

11 They then had all of the mothers read these stories
12 to the child once a week. I think it was for a couple of
13 months. Then they brought the children back. And the
14 children where the mothers were given accurate information,
15 none of those children had any false memories of the wipe
16 going into their mouth or seeing science demonstrations she
17 didn't see. And about 40 percent of the children whose
18 mother was given inaccurate information about the wipe going
19 into the mouth and inaccurate information about the details
20 of the science demonstration that they saw, now the children
21 had false memories and they said: Yes, a wipe was placed on
22 the sides of my face, went in my mouth, it tasted yucky, and
23 I saw a science experiment that they didn't actually see.

24 So the conclusion was that providing mothers with
25 false information, having mothers repeat this to their
26 children can cause false memories in children, including
27 about tactile sensations.

28 Q. What age were the children who were originally involved

1 in the original study?

2 A. Original study -- there were two studies. I think the
3 original study was preschoolers, four or five years old.

4 Q. Between the ages of three and five?

5 A. Yes.

6 Q. Then they did a second study; right?

7 A. Right.

8 Q. Older children between five and nine years old, around
9 there?

10 A. Correct.

11 Q. And they did the exact same thing; right?

12 A. Correct.

13 Q. And with those children, although they may have
14 originally reported the inaccurate detail happening, almost
15 all of the children when asked were then able to say: No.
16 My mom just told me about that. It didn't really happen to
17 me?

18 A. That's correct.

19 MS. FILO: That's all the questions I have, Your
20 Honor. Thank you.

21 THE COURT: Thank you.

22 Redirect, Mr. Madden?

23 MR. MADDEN: No, Your Honor.

24 THE COURT: Okay. Doctor, thank you very much.
25 You may step down. You are excused and free to leave. If
26 you could hand that document to me. Thank you.

27 Before I forget, ladies and gentlemen, in case I
28 confused you, earlier we marked an exhibit as People's 24,

1 and I mistakenly -- it was next in order, which was 17. I'm
2 not sure if we did this in your presence, but when Ms. Filo
3 was showing computer prints or pictures to the DNA expert,
4 Kristin Cardosa, of various parts of the chair, she indicated
5 later she will bring hard copies and have them marked. So 17
6 through 23 were marked as individual photographs, which I
7 would like at this time, Ms. Filo, if you could just note
8 them for the record, show them to the jurors, because I don't
9 think we showed them to you; is that correct?

10 MS. FILO: Your Honor, we showed them to the jury
11 on the screen. I just didn't have the --

12 THE COURT: Right. That I recall, but the actual
13 photos you've never seen; correct? Okay. Then, I don't
14 think it's necessary to show, you are right, because they
15 were up on the screen. They weren't the clearest up on the
16 screen, but you will have the individual photos that Ms. Filo
17 said.

18 At this time, ladies and gentlemen, we're going to
19 take a recess until 3:00 o'clock. I will order all members
20 of the jury to report to the jury assembly room on the second
21 floor. Counsel could stay in the courtroom.

22 (Whereupon, the jurors were excused and the
23 proceedings were had outside the presence of the jury.)

24 THE COURT: Jury has stepped outside the
25 courtroom. Mr. Chandler and both counsel are present. I
26 just wanted to put on the record that we had a sidebar
27 conversation this afternoon. Mr. Madden had objected to
28 certain questions as examples of leading questions being

1 asked the doctor. There were a few questions asked before we
2 approached the bench, and the doctor did respond that those
3 were examples of leading questions.

4 At sidebar, Ms. Filo wanted to ask some additional
5 questions, and it appeared to the Court that the additional
6 questions she wished to ask were examples of some questions
7 Mr. Madden had asked on cross-examination [sic]. I indicated
8 that I wasn't going to allow any additional questions, and
9 that if Mr. Madden objected, I would sustain the objection.
10 And that's the reason Ms. Filo didn't ask any questions and
11 you moved on.

12 Mr. Madden, you want to supplement the record at
13 all?

14 MR. MADDEN: I think that your recitation of the
15 order is correct, so I guess there is really nothing to
16 object to at this point. But my -- I'll indicate that my
17 objection at the bench was that it was inappropriate to allow
18 Ms. Filo to ask an expert testifying about appropriate
19 questioning in forensic interviews and to give her
20 hypotheticals of leading questions being asked by an
21 attorney.

22 According to Rules of Evidence, in a courtroom
23 where, of course, on cross-examination leading questions are
24 perfectly permissible, but obviously cross-examination has a
25 much different purpose in a much different universe. Has
26 nothing to do with suggestibility of children. You're just
27 asking about things that actually did happen, things that
28 they did say. You are summarizing, for example, which is

1 what was happening here. I objected on relevancy grounds.

2 I'm satisfied with the Court's ruling.

3 THE COURT: Ms. Filo, you want to --

4 MS. FILO: Yes, Your Honor. I do think that I
5 should have been allowed to continue the questioning with the
6 expert. And I'll say this, Mr. Madden didn't limit his
7 direct examination of this expert to just forensic
8 interviews. He talked about contamination by parents. He
9 talked about influence, external influences of other
10 children. I mean, he talked about, not just forensic
11 interviews, but what other factors will affect a child's
12 disclosure or information provided, and a parent asking a
13 child what's happened to you is certainly legal. It's
14 certainly appropriate. It's certainly permissible. But it
15 may lead -- in Mr. Madden's argument, it may lead to an
16 inaccurate disclosure of information.

17 I think I'm equally as entitled to say that. Mr.
18 Madden is asking questions that are legal, they are
19 permissible, they are available to be used, but they may be
20 leading to inaccurate information, and I think to restrict my
21 ability to ask the expert those questions, restricting my
22 ability to cross-examine on these exact subjects -- he wasn't
23 just called as an expert on forensic interviewing, he was
24 called as an expert in disclosure in general.

25 THE COURT: I don't disagree with a lot of what you
26 are saying, and because of the direct, there wasn't
27 objections during your cross, nor did I limit your cross.
28 However, the difference with the cross-examination by Mr.

1 Madden, it was presented in front of the jury. They were
2 here to hear the questions, see the demeanor of the
3 witnesses, and basically all of those issues of credibility
4 to evaluate in the courtroom, unlike everything else that
5 occurred outside the courtroom. That was the distinction I
6 see.

7 And it also puts Mr. Madden in a difficult
8 situation, trying to justify his defense or why he asked
9 certain questions. As he said, you know, they are proper and
10 allowable. How the jury interprets the answers in various
11 situations is up to them. They could give whatever weight
12 they want. I think that the examples you gave, in my
13 opinion, were sufficient, and that's why I restricted you any
14 further. I appreciate you following the Court's ruling.
15 Okay.

16 With that said, it's my understanding, Mr. Madden,
17 that you don't have any additional witnesses this afternoon?
18 And your expectation is, if you have another witness, it will
19 be Mr. Chandler?

20 MR. MADDEN: It's currently my expectation.

21 THE COURT: Okay. Mr. Chandler, since we have a
22 moment, I want to make sure that you understand that, you
23 know, you've heard this a number of times. You have a
24 constitutional right to remain silent. It is your decision
25 whether you decide to take the stand and testify, obviously,
26 with the advice of your attorney. Ultimately, if you choose
27 to testify, it's your decision. You choose not to testify,
28 it's your decision. You understand that?

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: Okay. I'm not going to ask you this
3 again. If you take the stand, I'm assuming that's your
4 choice. And if you don't, that's your choice.

5 Again, Mr. Madden, I'm assuming you don't have
6 additional witnesses this afternoon?

7 MR. MADDEN: I do not.

8 THE COURT: Okay.

9 MS. FILO: May I be heard, Your Honor?

10 THE COURT: Yes.

11 MS. FILO: I guess I would ask at this point a
12 decision be made. I mean, this case has now been pending for
13 a year and a half. We have been in -- actually in trial for
14 three weeks. I object being given the weekend to sort of
15 think about whether or not he's going to testify. He could
16 do it at any point. It's just at this point, I mean, it's
17 still 3:00 o'clock. We have at least an hour and a half that
18 we could use today. If he's going to testify, it seems like
19 now is the time to do it.

20 THE COURT: Well, I'm anticipating, Mr. Madden, you
21 are going to ask the Court to recess?

22 MR. MADDEN: Yes.

23 THE COURT: You are going to ask that I not require
24 to call your next witness?

25 MR. MADDEN: Correct.

26 THE COURT: The only reservation I have, Ms. Filo,
27 I think if Mr. Madden talks to his client and represents to
28 you that it appears that he's going to testify, there is no

1 remedy if on Monday he shows up and says I'm not going to.
2 He could change his mind at any time.

3 Off the record.

4 (Whereupon, there was a discussion off the record.)

5 THE COURT: The record will reflect the jury has
6 returned into the courtroom. Both counsel and Mr. Chandler
7 are present in the courtroom.

8 Ladies and gentlemen, thank you for your patience.
9 After discussing with counsel, the state of the case -- first
10 of all, we're about to take the evening recess for the
11 weekend. Second of all, it's my understanding that there is
12 at least one potential witness that will be called Monday,
13 and then sometime next week you will receive the case and you
14 will start deliberating. Okay? So next week you are going
15 to begin to deliberate.

16 So I wanted to remind you, and I'm not sure the
17 specific date you are going to start deliberating, because
18 when the lawyers do their closing remarks, I don't restrict
19 the length of time that they argue. Okay? It could be an
20 hour, it could be two hours they will give closing remarks to
21 you. I read the instructions of law first to you, then you
22 hear closing remarks, and then you'll be escorted into the
23 jury room to begin your deliberations.

24 So that will happen next week sometime. And also,
25 keep in mind that since you will start deliberating, out of
26 abundance of caution, keep Friday available because we'll be
27 in session next Friday, although maybe not in court, in the
28 courtroom, you will be deliberating.

1 So we're going to recess at this time. I'm doing
2 this as a courtesy to counsel. As you know, throughout this
3 trial, at least in my opinion, I think I have been generous
4 to counsel, giving them the time they need to properly put
5 their case to the jury. I do that on every case because I
6 think it's important to both sides. So I know it could be
7 frustrating for you for the delays, and I apologize for that.
8 But every time there is a delay there is a reason.

9 With that said, Monday morning it is my intent to
10 call you up at 9:00 o'clock. And if Mr. Madden or Ms. Filo
11 are not here when you come in, that's because they are
12 running late. Okay? So I told you that there was going to
13 be a time that we start this trial at 9:00 o'clock. I'm
14 shooting for Monday. Okay?

15 MR. MADDEN: Your Honor, before you finish, I would
16 like to approach the bench with Ms. Filo on one matter. We
17 may be able to do that?

18 THE COURT: Sure.

19 (Whereupon, there was a discussion at the bench.)

20 THE COURT: So we'll be in recess. I'll order all
21 members of the jury to report to the jury assembly room
22 Monday morning at 9:00 a.m. Please have a safe weekend and
23 we'll see you all on Monday morning. Thank you.

24 Record will reflect the jury has left the
25 courtroom. I will order both counsel and Mr. Chandler here
26 Monday morning at 9:00 a.m., and we'll be in recess.

27 (Whereupon, the Court took the evening recess.)
28

1 STATE OF CALIFORNIA)
2 COUNTY OF SANTA CLARA)

3

4 I, JAMIE L. MIXCO, HEREBY CERTIFY THAT:

5 The foregoing is a full, true, and correct
6 transcript of the testimony given and proceedings had in the
7 above-entitled action taken on the above-entitled date; that
8 it is a full, true, and correct transcript of the evidence
9 offered and received, acts and statements of the Court, also
10 all objections of counsel, and all matters to which the same
11 relate; that I reported the same in stenotype to the best of
12 my ability, being the duly appointed and official
13 stenographic reporter of said Court, and thereafter had the
14 same transcribed into typewriting as herein appears.

15 I further certify that I have complied with CCP
16 237(a)(2) in that all personal juror identifying information
17 has been redacted if applicable.

18

19 Dated:

20

21

22 _____
23 Jamie L. Mixco, C.S.R.
Certificate No. 12708

24 ATTENTION:
25 CALIFORNIA GOVERNMENT CODE
SECTION 69954(D) STATES:

26 "ANY COURT, PARTY, OR PERSON WHO HAS PURCHASED A TRANSCRIPT
27 MAY, WITHOUT PAYING A FURTHER FEE TO THE REPORTER, REPRODUCE
28 A COPY OR PORTION THEREOF AS AN EXHIBIT PURSUANT TO COURT
ORDER OR RULE, OR FOR INTERNAL USE, BUT SHALL NOT OTHERWISE
PROVIDE OR SELL A COPY OR COPIES TO ANY OTHER PARTY OR
PERSON."

EXHIBIT 3

(Vol. 16)

1 TO THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
2 SIXTH APPELLATE DISTRICT
3

4 ----o0o----

5
6 THE PEOPLE OF THE STATE OF)
7 CALIFORNIA,)

8 Plaintiff - Respondent,)

9 v.)

No. C1223754

10 CRAIG RICHARD CHANDLER,)

11 Defendant - Appellant.)
12

COPY

13
14 VOLUME 16

15 PAGES 1542 - 1570

16 JULY 29, 2013

17 ----o0o----

18
19 REPORTER'S TRANSCRIPT ON APPEAL
20 FROM THE JUDGMENT OF THE SUPERIOR COURT
21 OF THE STATE OF CALIFORNIA
22 IN AND FOR THE COUNTY OF SANTA CLARA
23 BEFORE THE HONORABLE ARTHUR BOCANEGRA, JUDGE, AND JURY

24 ----o0o----

25 APPEARANCES:

26 FOR PLAINTIFF-RESPONDENT: OFFICE OF THE ATTORNEY GENERAL
27 BY: KAMALA D. HARRIS,
28 Attorney General of the State
of California

FOR DEFENDANT-APPELLANT: In Propria Persona

1 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 IN AND FOR THE COUNTY OF SANTA CLARA
3 BEFORE THE HONORABLE ARTHUR BOCANEGRA, JUDGE, AND JURY
4 DEPARTMENT NO. 37

5 ---o0o---

6
7 THE PEOPLE OF THE
8 STATE OF CALIFORNIA,

9 PLAINTIFF,

10 v.

CASE NO. C1223754

11 CRAIG RICHARD CHANDLER,

12 DEFENDANT.
13 _____

14 ---o0o---

15
16
17 REPORTER'S TRANSCRIPT OF PROCEEDINGS

18 JULY 29, 2013

19 ---o0o---

20
21
22
23 APPEARANCES:

24 FOR THE PEOPLE:

ALISON FILO
Deputy District Attorney

25
26 FOR THE DEFENDANT:

BRIAN MADDEN
Attorney at Law

27
28 OFFICIAL COURT REPORTER:

JAMIE L. MIXCO
C.S.R. No. 12708

INDEX

PEOPLE'S EXHIBITS

<u>Exhibits</u>	<u>Description</u>	<u>Page</u>
25 Marked	diagram	1561
1 through		1562
25 Received		

DEFENSE EXHIBITS

<u>Exhibits</u>	<u>Description</u>	<u>Page</u>
A-1 through		1563
A-13		
Received		
B Received		1563
D Received		1563
E-1 through		1563
E-4		
Received		
F-1		1563
Received		
F-2		1563
Received		
G Received		1563

1 San Jose, California

July 29, 2013

2 PROCEEDINGS

3 THE COURT: Thank you, ladies and gentlemen.
4 Record will reflect both counsel are present, Mr. Chandler is
5 present in the courtroom, the jury is not in the courtroom
6 yet.

7 Mr. Chandler, on Thursday we had talked about your
8 right to testify. Mr. Madden represented to the Court that
9 you decided not to testify, so I'm assuming that is correct.
10 Correct?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: So it's your decision not to testify at
13 this time?

14 THE DEFENDANT: Yes.

15 THE COURT: Okay. At this time, we're going to
16 call the jury up. We're going to do the stipulation, and as
17 I understand it, at that point both sides will rest, subject
18 to going over the exhibits and the Court making decisions
19 what exhibits will be admitted into evidence. I will bring
20 the jury back tomorrow morning to instruct them and then
21 Wednesday morning for closing remarks. And if we have one
22 more piece of evidence, we're going to introduce it into
23 evidence, if I didn't already say that.

24 Is that all correct, Counsel?

25 MR. MADDEN: Yes. Is that -- you are referring to
26 the stipulation?

27 THE COURT: Yes.

28 MR. MADDEN: Yes.

1 THE COURT: Then once I excuse the jurors, I will
2 ask Juror No. 8 to stick around, and I'm going to ask him a
3 few questions. Okay? So we'll be in recess. We'll call the
4 jury up now.

5 (Whereupon, a brief recess was taken.)

6 THE COURT: Thank you, ladies and gentlemen.
7 Record will reflect all members of the jury are present, both
8 counsel are present, Mr. Chandler is present in the
9 courtroom.

10 As I understand it, Counsel, there is a
11 stipulation.

12 MR. MADDEN: Yes, Your Honor. I will be happy to
13 read it for the record.

14 THE COURT: Yes, please.

15 MR. MADDEN: Your Honor, the parties make the
16 following stipulation:

17 The parties hereby stipulate that the families of
18 Laurie Doe, Wendy Doe, and Arleth Doe have filed civil
19 lawsuits seeking money damages against Craig Chandler and the
20 Evergreen School District. Each of these lawsuits was filed
21 after the children made statements to law enforcement and/or
22 gave prior testimony in court, which has been referenced in
23 this trial.

24 THE COURT: Thank you.

25 Ms. Filo, do you enter into that stipulation?

26 MS. FILO: So stipulated.

27 THE COURT: Once again, ladies and gentlemen, the
28 stipulation that Mr. Madden just read to you is not in

1 dispute and you must accept that stipulation is true.

2 Subject to the Court and counsel discussing all of
3 the exhibits that haven't been introduced into evidence yet,
4 which we'll do at the recess, does the defense rest, Mr.
5 Madden?

6 MR. MADDEN: Yes, Your Honor.

7 THE COURT: And, Ms. Filo, do the People rest at
8 this time, subject to introductions of the exhibits?

9 MS. FILO: Yes, Your Honor.

10 THE COURT: Ladies and gentlemen of the jury, both
11 sides having rested, you have heard all of the evidence that
12 you are going to hear in this particular trial. At this
13 stage of the trial, what will occur is I will first instruct
14 you on the law that applies to this case and attorneys will
15 give closing remarks. You will hear from Ms. Filo, then Mr.
16 Madden and Ms. Filo will give rebuttal. I will give you one
17 last instruction and then you will begin deliberating.

18 The schedule is going to be as follows:

19 We're going to recess in just a moment for the
20 balance of the day. Now that all of the evidence has been
21 presented to you, it's at that stage that I could meet with
22 the attorneys and make a decision of what instructions of the
23 law I'm required to read to you. Okay? As I told you
24 before, each one of you will have a copy of the instructions,
25 but I'm required to read it to you, so I will read it to you
26 in open court. You will each have that instruction as your
27 personal copy to take into the jury room while you are
28 deliberating.

1 I'm going to read the instructions to you tomorrow
2 morning at 9:00 a.m. Once I finish reading the instructions,
3 we're going to take a recess for the rest of the day and
4 we're going to come back Wednesday morning at 9:00 o'clock.
5 You will hear Ms. Filo give her closing remarks, Mr. Madden
6 Ms. Filo, and then you will begin deliberating.

7 Once you start deliberating, let's assume that is
8 on Wednesday, you know, if you haven't reached a decision by
9 the end of the day Thursday, then you'll be required to come
10 back on Friday. Just a reminder to keep Friday available
11 just in case.

12 So with that, we're going to take a recess until
13 tomorrow morning at 9:00 o'clock. I could tell you for
14 planning purposes, and I apologize for breaking up your day
15 in such a manner, the instructions will take less than an
16 hour, an hour or less. The benefit for you, and hopefully
17 you could benefit from this, you will have the balance of the
18 day to yourself and you will return Wednesday morning at 9:00
19 o'clock.

20 We'll recess at this time. I will order all
21 members of the jury to report the jury assembly room tomorrow
22 morning at 9:00 a.m. At this time you are all excused.
23 Please leave your notebooks on your chair.

24 I'm going to ask Juror No. 8, Mr. -- I'm going to
25 mispronounce your name, I apologize, [Juror No. 8].

26 JUROR NO. 8: Yes.

27 THE COURT: Okay. If you could just remain in the
28 courtroom. Everyone else may leave. See you tomorrow

1 morning at 9.

2 MR. MADDEN: Your Honor, may we approach?

3 THE COURT: Sure.

4 (Whereupon, there was a discussion at the bench.)

5 THE COURT: The record should reflect that both
6 counsel are present, Mr. Chandler is present, Juror No. 8,
7 [Juror No. 8], is present, all other jurors have left the
8 courtroom.

9 [Juror No. 8], the reason I asked you to stay
10 behind is because I wanted to ask you a few questions. Based
11 on my observations -- as you know, you know, I usually scan
12 the courtroom. I look at jurors, and sometimes when I notice
13 something, I will ask a juror about it. For example, if I
14 notice a juror with their eyes closed, sometimes I'm not sure
15 if they are concentrating on what's being said, or maybe they
16 dozed off, so I have to ask them to find out. And, you know,
17 oftentimes I hear, you know, I worked all night. I'm very
18 tired. I apologize I dozed off. Or, I was listening to what
19 was being said and it helps me to close my eyes, whatever the
20 reason.

21 The reason I asked you to stay behind is because at
22 certain times of the trial, I think when some of the children
23 were testifying, I noticed that when Mr. Madden was asking
24 questions, you were looking at Mr. Madden which was fine.
25 But when the witness responded, you continued to look at him,
26 and I was just wondering, was there a reason for that?

27 JUROR NO. 8: No, sir.

28 THE COURT: No?

1 JUROR NO. 8: No, sir. None whatsoever.

2 THE COURT: Okay. I notice with other witnesses
3 you didn't do it.

4 JUROR NO. 8: No particular reason at the time, no.

5 THE COURT: Okay. Was there a reason why you
6 wouldn't look at the children when they were responding? Was
7 it anything to do with, you know, evaluating their
8 credibility?

9 JUROR NO. 8: No. I did turn around occasionally,
10 but Mr. Madden was here at the podium, so it was very
11 convenient. I did turn around several times, enough to
12 follow what was going on very closely.

13 THE COURT: Okay. So throughout the entire trial
14 you've heard everything?

15 JUROR NO. 8: Everything I got, pretty much.

16 THE COURT: You made some detailed notes?

17 JUROR NO. 8: (Shakes head up and down.)

18 THE COURT: You know, some jurors don't take notes,
19 and you obviously did, which is fine. We all do things
20 differently. Okay. So no explanation about that.

21 JUROR NO. 8: No. It's just Mr. Madden was right
22 there, it was convenient for me to look in this direction,
23 but I occasionally looked up to see how the ladies were
24 doing.

25 THE COURT: Okay.

26 JUROR NO. 8: I have no problems.

27 THE COURT: Okay. And, you know, obviously at
28 this point it's very important for every juror to keep an

1 open mind until you start deliberating and then we exchange
2 ideas.

3 JUROR NO. 8: Yes.

4 THE COURT: You still capable of keeping an open
5 mind?

6 JUROR NO. 8: Absolutely.

7 THE COURT: Okay. Then at this time, [Juror No.
8 8], I wanted to ask you about that because I wanted to get an
9 explanation, and I could note that your responses seemed to
10 be pleasant. You are smiling to me, so you are not taking it
11 personally that I'm asking you about this?

12 JUROR NO. 8: No, not personal.

13 THE COURT: Okay. What I'm going to do is ask you
14 if you'd stay outside the courtroom just for a minute. What
15 I'm going to do, just to let you know, I'm going to ask the
16 lawyers do they want me to follow up on any further questions
17 before I excuse you. Take a minute. Thank you for your
18 patience.

19 JUROR NO. 8: Okay.

20 THE COURT: Record should reflect [Juror No. 8],
21 Juror No. 8, has just stepped outside the courtroom.

22 Counsel want me to inquire in a certain manner some
23 additional questions? Mr. Madden.

24 MR. MADDEN: Your Honor, I don't think that
25 additional questions would be productive at this point since
26 he was denying any reason whatsoever for his conduct, which
27 to me is apparently incredible, given the facts which we talk
28 about when we are done.

1 THE COURT: Okay. Mr. Madden what I'm going to do
2 is -- I don't intend to cut you off, but I want to excuse
3 him, then we could put on the record our informal
4 of-the-record discussions.

5 MR. MADDEN: Certainly.

6 THE COURT: [Juror No. 8], that's fine right there.
7 I wanted to bring you right back in and say see you tomorrow
8 morning. Obviously, I was going to talk to the lawyers.
9 They didn't have any additional questions.

10 JUROR NO. 8: Thank you, sir.

11 THE COURT: Thank you. Have a good day.

12 JUROR NO. 8: You bet.

13 THE COURT: [Juror No. 8] has left the courtroom.

14 Mr. Madden do you want to put on the record what we
15 discussed at this point, and I cut you off earlier, but I
16 think it's important to give you an opportunity to put on the
17 record your observations and comments.

18 MR. MADDEN: Thank you, Your Honor.

19 I've asked the Court to question this juror, which
20 the Court did, and I'm asking the Court to discharge this
21 juror for good cause for the following reasons:

22 During my cross-examination of the five complaining
23 witnesses, I intentionally located and placed myself
24 essentially where this podium is right now, at the far end of
25 the jury box, and I did this for one reason. I think in a
26 case of this nature, I think it's important to keep the
27 child's line of sight to me and to me alone and not have them
28 confused or intimidated by the presence of my client. So I

1 typically don't do this from the counsel table, and I do that
2 out of respect for the children.

3 [Juror No. 8] from the jury panel is 9 feet
4 approximately from the front of this podium. And his conduct
5 during my cross-examination of each of the children was
6 incredibly off-putting to me personally, and it was
7 off-putting because at all times, and later on I'm happy
8 to -- I'm sure the Court could make its own observations and I
9 have no objection to Ms. Filo making hers. But all jurors
10 during my questioning were, as one would expect, directed
11 towards the witness stand and they were listening and
12 observing. In essence, doing things that you need to do to
13 determine the credibility of witnesses. First and foremost,
14 you have to pay attention to them.

15 [Juror No. 8] didn't just look at me, he turned his
16 chair as far as could be allowed, and he essentially was
17 staring at me during all of my questioning. He essentially
18 had his back turned on the jurors. Like I said, that's a
19 tremendously off-putting experience as an attorney, and I
20 could not fathom any reason that he would be doing that,
21 other than to intimidate me or express his displeasure to me
22 or to the defense.

23 It didn't happen once, it happened for all of these
24 witnesses. And his statement this morning, he didn't do it
25 for a particular reason. I think he said it was convenient.
26 He said he had no reason for it.

27 Now, I think as the Court noted earlier in
28 chambers, I could imagine valid reasons why a juror would do

1 that. For example, if it was too hard for the juror
2 personally to look at a child and it was easier to kind of
3 look away or close their eyes and just listen. I think
4 that's a valid tactic for a juror to use. That's a personal
5 thing. But there is no way that turning to someone 9 feet
6 away and looking up and staring at them, a lawyer, for the
7 whole time he's cross-examining a child, there is no way he
8 would have been paying attention to these children. It makes
9 no sense whatsoever, and his statement that it certainly had
10 no reason for it is bizarre in height of his conduct, which
11 is in itself bizarre.

12 Penal Code 1089 relates to a removal of the juror
13 during trial. I think his explanation for what he was doing
14 is insufficient, highly suspect, and I ask that he be
15 removed. I would cite another case as authority for this.
16 When a juror exhibits hostility towards one of the attorneys,
17 the Court has the discretion to remove the juror under
18 Section 1089. This is *People v. McManus*, M-c-M-a-n-u-s, 1960
19 case, 180 Cal.App.2d, page 19, at pages 30 and 31.

20 So I will submit the matter based on those comments
21 and that authority.

22 THE COURT: Thank you, Mr. Madden.

23 Ms. Filo, response?

24 MS. FILO: Briefly, Your Honor. I think that the
25 juror has been questioned. The juror has committed no
26 misconduct. He hasn't communicated with me. I haven't
27 received, you know, e-mails, phone calls. He hasn't
28 communicated with any other jurors, as far as we know. There

1 has been no indication that he's inappropriately reviewed
2 media, done Internet searches. He's committed no misconduct.

3 What he seems to have done is made Mr. Madden
4 uncomfortable. And although I'm sympathetic with that as a
5 lawyer, I'm trying to imagine the reverse situation where the
6 People come in and the deputy district attorney is asking
7 that a juror be removed because he or she makes me feel
8 uncomfortable. He was questioned about it. He was affable,
9 he was pleasant. He indicated no hostility to anyone. He
10 referred to Mr. Madden appropriately and answered the Court's
11 questions as forthrightly as I think he could have.

12 So at this point, there is no basis to excuse him.

13 THE COURT: Mr. Madden any additional comments?

14 MR. MADDEN: Not beyond my original comments, Your
15 Honor. I mean, clearly this was done to intimidate me, and
16 his explanation gives no explanation.

17 THE COURT: Thank you. I will note that
18 [Juror No. 8] did say that, you know, he was looking at Mr.
19 Madden and I think his term was it was convenient. He did
20 say he occasionally looked at the witnesses while they were
21 testifying, then he turned back. It's clear to me that he's
22 paid very, very close attention to the testimony of this
23 case, and it's reflected by his response when I asked him a
24 question and he lifted his notebooks and he had two notebooks
25 of notes. He's one of the jurors that has taken more notes
26 than any other juror, it appears to me.

27 I also mentioned in chambers that when Mr. Madden's
28 expert testified, Dr. O'Donohue, [Juror No. 8] was taking

1 almost verbatim notes. I mean, he was writing everything
2 down. He was very engaged, and it just seemed to me that I
3 noted, and I shared this with counsel my observation, that if
4 there was that much hostility by this juror towards the
5 defense and Mr. Madden, it would seem like he would not be
6 very interested in a defense witness. So I just say that for
7 observation purposes.

8 He's represented to me that the reason why he
9 looked at Mr. Madden while he was asking questions of certain
10 witnesses, that he's open-minded, he could continue to do his
11 job as a juror. And although him looking at Mr. Madden may
12 have made Mr. Madden uncomfortable, it doesn't appear to me
13 that it had any impact on Mr. Madden's effective
14 cross-examination, which was effective and detailed. I
15 simply cannot find that [Juror No. 8] has committed any
16 misconduct that would warrant his removal based on what I
17 heard at this point. So Mr. Madden's motion to have him
18 removed at this time will be denied for those reasons.

19 With that said, we still have the exhibits that we
20 need to go over, and I don't believe any exhibit has been
21 introduced into evidence. Do counsel have a copy of the
22 exhibits? Do you have a list of all of the exhibits?

23 MR. MADDEN: I think I had one as of the -- one day
24 last week, Your Honor.

25 THE COURT: I'm going to ask our clerk to run off a
26 copy of our exhibit list. It might make it easier for
27 counsel to go through it to see if they have any concerns
28 about any of the exhibits.

1 MS. FILO: Judge, I'm confident that the only
2 exhibit we had any dispute about was the one exhibit that was
3 shown to Ms. Vijayendran that constituted her typewritten
4 notes and --

5 THE COURT: That was Defense C, and C-1 was the
6 redacted copy.

7 MS. FILO: Right.

8 MR. MADDEN: I agree with Ms. Filo. I think that
9 was our only practical dispute with any of the evidence and
10 she objected to it. The Court made its ruling. I'm
11 sufficient we have a record of my position on that.

12 THE COURT: Right.

13 MR. MADDEN: And I would assume the Court's not
14 going to allow that I will be offering it. But if that's the
15 case, we might be able to shortcut it. I would like perhaps
16 an opportunity to go over exhibits with Ms. Filo and the
17 Court maybe in chambers. I think she's probably right.

18 THE COURT: Right. No. I just wanted to make sure
19 before counsel indicates we have no objections to any of the
20 exhibits and they are admitted into evidence, I want to make
21 sure you have a chance to look through them first.

22 MR. MADDEN: Could we do that in chambers?

23 THE COURT: Sure. What I will do is -- I want to
24 put it on the record.

25 MR. MADDEN: Sure, of course.

26 THE COURT: I will step off, let you have a moment
27 to look through them, and then I need to make copies of the
28 CALCRIM instructions that I have that I want to go over with

1 you. And then during the recess, we'll do that informally.
2 Okay?

3 MR. MADDEN: Okay. Exhibits informally, you mean?
4 Or the instructions?

5 THE COURT: The instructions informally. We could
6 do the exhibits on the record maybe after we preliminarily go
7 over the instructions, but we're going to be in recess.

8 MR. MADDEN: That's fine, Your Honor.

9 THE COURT: Until -- so I will meet with counsel in
10 a moment, and we'll be in recess until, I'm going to say,
11 1:30, because what I do, Mr. Madden, I do it informally with
12 counsel and then I go on the record to put on the record the
13 instructions. And if you want your client present for that,
14 then I'm going to have to keep him here until the afternoon.

15 MR. MADDEN: I would assume let him go. I don't
16 see any reason. I will waive his appearance for that, Your
17 Honor.

18 THE COURT: Mr. Chandler, what we're going to do is
19 preliminarily discuss the instructions. Once we do that, I
20 will go on the record what instructions we're going to read,
21 what objections there may be to any particular instruction.
22 You have the right to be present for that portion of the
23 trial, or if you choose, as Mr. Madden has indicated, you
24 could waive your appearance and we'll do the instructions
25 formally without your presence.

26 So you wish to waive your presence?

27 THE DEFENDANT: That's okay, Your Honor. Yes.

28 THE COURT: Pardon me?

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: You join in that, Mr. Madden?

3 MR. MADDEN: Yes, I do.

4 THE COURT: What I will do, I will simply order Mr.
5 Chandler here tomorrow morning at 9:00 a.m. So take a look
6 at the exhibits. I'm going to need about 15 minutes to make
7 a copy of the instructions for you. I have one for you. I
8 need to copy it. We'll be in recess.

9 (Whereupon, the Court recessed.)

10 THE COURT: We'll go on the record, and the record
11 will reflect that both counsel are present, Mr. Chandler is
12 present, too.

13 Mr. Chandler, I had to bring you back because I
14 forgot that your attorney, Mr. Madden, is going to be asking
15 that I give the jury a lesser included offense to the crimes
16 charged of battery, which is a misdemeanor. And because it's
17 a misdemeanor, the statute of limitations period for a
18 misdemeanor is one year. And in the event the statute of
19 limitations period has run, on each count you would have to
20 waive the statute of limitations period for the jury to
21 consider that. You understand all of that?

22 THE DEFENDANT: Yes.

23 THE COURT: You've had time to speak with Mr.
24 Madden about it?

25 THE DEFENDANT: Yes, Your Honor.

26 MR. MADDEN: One moment please, Your Honor.

27 THE COURT: Okay.

28 MR. MADDEN: He has -- we discussed it, Your Honor.

1 THE COURT: Okay. Thank you.

2 At this time, Mr. Chandler, are you prepared to
3 waive the statute of limitations period as to each count so
4 that the Court could give the misdemeanor battery?

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: Okay. You agree, Mr. Madden?

7 MR. MADDEN: Yes, Your Honor.

8 THE COURT: Okay. Thank you. Then I'll note the
9 waiver, and there will be misdemeanor batteries given as
10 lesser included offenses.

11 So that concludes this matter.

12 THE DEFENDANT: Thank you.

13 THE COURT: So we're done.

14 (Whereupon, there was a discussion off the record.)

15 THE COURT: We're going to do the exhibits, Mr.
16 Chandler. You waive your right as far as the exhibits go?

17 MR. MADDEN: Yes, Your Honor.

18 THE COURT: Thank you.

19 Counsel, have you had a chance to look over the
20 exhibit list?

21 MS. FILO: I have.

22 MR. MADDEN: I have, Your Honor.

23 THE COURT: Let's start with the People's. Are
24 there any objections to any of the People's exhibits?

25 MR. MADDEN: I don't believe so, Your Honor. 24
26 was just Det. Chubon's diagram?

27 MS. FILO: No. I think number 24 is the --

28 THE COURT: Copy of a drawing by Arleth.

1 MR. MADDEN: Okay. That's fine.

2 MS. FILO: The only exhibit we didn't mark is the
3 one that I had Annie Doe draw. I don't really care.

4 THE COURT: You want it at least marked for
5 identification for the record?

6 MS. FILO: I think it should be marked for
7 identification for the record, and I guess I feel like at
8 this point, now that I think about it, we should move it in.
9 The only reason I say that is because the witness was shown
10 some photographs by defense counsel, which she appeared to
11 take issue with, which is why I had her draw the exhibit
12 that's on the easel. And of course she's testified that she
13 was in a classroom in the spring of 2011, and the photographs
14 that she was being shown were actually taken in January of
15 2012, in a totally different school year. So I think what
16 the witness drew is really the only representation we have of
17 the classroom when she was in it.

18 THE COURT: Well, the record is clear that during
19 her cross, she did draw the diagram and makes reference to it
20 during her testimony. So for the purposes of clarity for the
21 record it's clear. So I will allow that be marked at this
22 point as People's 25 for identification, and you're moving
23 that into evidence as well?

24 (Whereupon, People's Exhibit 25 was marked for
25 identification.)

26 MS. FILO: Please.

27 THE COURT: Mr. Madden, you have any response?

28 MR. MADDEN: No, Your Honor. I have no objection.

1 THE COURT: Okay. So People's one through 25 are
2 admitted into evidence, and that includes 1-A, 5-A, 6-A, 8-A,
3 and 15-A, which are transcripts of the various children's
4 audio/video interview pursuant to the earlier stipulation by
5 counsel.

6 (Whereupon, People's Exhibits 1 through 25 were
7 received into evidence.)

8 THE COURT: And as to the defense exhibits, I know,
9 Ms. Filo, you objected to Defense C and C-1, and those two
10 will not be admitted into evidence. I will note for the
11 record, specifically C-1 are the notes that Mr. Madden was
12 asking to be introduced into evidence. C-1 are the redacted
13 portions of the notes he wanted in. C -- Defense C were the
14 typewritten notes unredacted. So over the Defense objection,
15 C-1 is not admitted into evidence. And Defense C was not
16 being asked to be moved into evidence because they were not
17 redacted. So that's over defense objection.

18 Any objection to any of the other defense exhibits,
19 Ms. Filo?

20 MS. FILO: No, Your Honor.

21 THE COURT: Mr. Madden, are you moving all of them
22 into evidence?

23 MR. MADDEN: Yes, Your Honor.

24 THE COURT: Okay. Then without objection, all
25 defense exhibits are introduced into evidence, except for C
26 and C-1.

27 ///

28 ///

1 (Whereupon, Defense Exhibits A-1 through A-13, B,
2 D, E-1, E-2, E-3, E-4, F-1, F-2, and G were received into
3 evidence.).

4 THE COURT: Just keep in mind during argument, that
5 Defense E-1, 2, 3, and 4, I don't recall if we had any
6 testimony about those other than them being marked.

7 MR. MADDEN: The testimony from Chubon, that he
8 took them.

9 THE COURT: Right. Okay.

10 MS. FILO: They were shown to Det. Chubon and he
11 acknowledged having taken those photos.

12 THE COURT: Okay. All right. Then that takes care
13 of the exhibits. And I gave you copies of the instructions
14 and I have some other instructions here for you that we'll
15 address. And if you want to use an extra copy of the
16 CALCRIM, I have it up here in case you want it.

17 We're off the record.

18 (Whereupon, the Court recessed.)

19 THE COURT: On the record. Jury is not present.
20 Mr. Chandler is not present. Having waived his appearance,
21 we discussed the instructions informally. I'm going to put
22 them on the record. If you have an objection to a particular
23 instruction, let me know.

24 Court is going to give CALCRIM 121 as modified; 200
25 as modified; 201 as modified; 202 as modified; 207 as
26 modified; 208 as modified; CALCRIM 220, the reasonable doubt
27 instruction, the Court is going to give that as modified
28 pursuant to Mr. Madden's request.

1 Is that correct, Mr. Madden?

2 MR. MADDEN: It is, yes.

3 THE COURT: Okay. Just so the record is clear, the
4 modification applies to the second paragraph of that
5 instruction, and the second sentence of the second paragraph
6 it reads:

7 This presumption requires that the People prove a
8 defendant guilty beyond a reasonable doubt.

9 The Court is going to go modify it at defense
10 request:

11 This presumption requires that the People prove
12 each element of a crime and special allegation beyond a
13 reasonable doubt.

14 222, the Court will give as modified; 223 will be
15 given without modification; 225, 226 -- well, hold on. 225
16 will be given as modified; 226 will be given as modified; 252
17 will be given as modified; 300 given without modification;
18 301 given with modifications; 302 without modifications will
19 be given. Parties agree that 303 will not be given. 318
20 will be given as modified; 330 will be given without
21 modification; 332 and 333 will be given as modified; 355 will
22 be given without modification; 357, 358 and 359 will not be
23 given.

24 Also, 350 -- 251 will not be given. The Court is
25 giving 252. 370 will be given as modified. At the defense
26 request, the Court will give 960, which is battery, a lesser
27 included. 11 -- excuse me -- 1110 will be given as modified;
28 1190 will be given without modification; 3181 will be given

1 as modified; 3500 will not be given; 3501 will be given as
2 modified; 3502 will not be given; 3515 will be given as
3 modified; 3516 will not be given; 3517 will be given as
4 modified; 3519 will not be given; 3530 will not be given. I
5 will give 3550.

6 MR. MADDEN: 5-0?

7 THE COURT: 3550. Yeah, 5-0; 3550, which is the
8 pre-deliberation, will be given as modified. 3577 I will
9 give as modified, and 3590 I will give as modified.

10 Mr. Madden, during our informal discussions of the
11 instructions, you asked the Court, I think with any
12 instruction and the verdict form, to not refer to the lesser
13 included battery as a misdemeanor battery. If the Court
14 identifies it's a misdemeanor battery, it would be over your
15 objection.

16 Just tentatively, I'm inclined to refer to it as a
17 misdemeanor battery for the following reasons:

18 One, the lewd and lascivious act, which is charged,
19 is identified in the verdict forms as a felony, as well as a
20 felony in the instructions. And it's my intent to identify
21 the battery as a misdemeanor in the verdict forms as well,
22 and the instructions there is reference to this. This is
23 over your objection. I will allow you to make any additional
24 comments you wish at this time.

25 MR. MADDEN: I would ask that substitution of the
26 word "misdemeanor," the Court insert the word or words "crime
27 of misdemeanor" as opposed to -- excuse me -- "crime of
28 battery" other than misdemeanor battery.

1 THE COURT: Any comment, Ms. Filo?

2 MS. FILO: I'll submit it, Your Honor. I think
3 it's inappropriate. I think a battery could be charged as
4 either a felony or a misdemeanor. I think the jury has to be
5 told whether it's being submitted to them as a felony or a
6 misdemeanor.

7 MR. MADDEN: It's -- an LIO is a felony or
8 misdemeanor. They don't have to be told.

9 THE COURT: Okay. Thank you. Over Mr. Madden's
10 objection, I will identify it as a misdemeanor battery.

11 Then finally, Ms. Filo asked that the Court give
12 instruction 371, specifically making reference to:

13 If the defendant tried to hide evidence, that
14 conduct may show that he was aware of his guilt if --
15 conclude, the defendant made such an attempt, it is up to you
16 to decide its meaning and importance. However, evidence of
17 such attempt could not prove guilt by itself.

18 Mr. Madden, you objected to this instruction;
19 correct?

20 MR. MADDEN: I do. The reason that I object is
21 that there is a time frame that is not limited. As the
22 People suggest, the time frame they are pointing to is the
23 morning of January 10th of 2012. And what I'm saying is,
24 according to this witness's own testimony, the events with
25 her are alleged to have happened a week before, before Mr.
26 Chandler was a suspect. And it is equally possible that if
27 there was a blindfold, that it was taken out at that --
28 before he was a suspect, before he was arrested or even

1 questioned, and I think it is completely unfair to allow the
2 jury to draw inference of hiding evidence, when if it was
3 taken the week before, that would be a totally inappropriate
4 instruction. The evidence is ambivalent and does not support
5 that instruction.

6 MS. FILO: Could I add one thing, Judge? When we
7 broke I thought about. It's not just there is actual missing
8 evidence, which the People think there is, there is a missing
9 blindfold someplace. But the instruction actually says
10 "whether the defendant tried to hide evidence." And
11 certainly the People intend to argue that the defendant
12 arrived on campus that morning and was found with cleaning
13 supplies in his classroom. So, I mean, we clearly intend to
14 argue that the defendant was there that morning 45 minutes to
15 an hour earlier than he's ever arrived previously, with the
16 specific intent of hiding evidence or attempting to clean up
17 evidence within his classroom. That's why the evidence was
18 admitted.

19 MR. MADDEN: The evidence is the contrary, Your
20 Honor. There is no evidence whatsoever that he was cleaning
21 anything, direct or circumstantial. The only evidence is
22 that when he was asked to leave, having been told he's on
23 administrative leave, he asked if he could take items. He
24 took two items that I would assume are in every teacher's
25 class and every grade, every grammar school, every junior
26 high school, and every high school in this country, Handi
27 Wipes and a cleaning product. I mean, that's just
28 something -- there is no evidence that it was brought in. No

1 evidence that he had used it. There wasn't a sufficient
2 period of time for any of those things to occur, nor was
3 there any circumstantial evidence that they had occurred.

4 MS. FILO: But the question was, was he intending
5 for them to occur?

6 MR. MADDEN: That's a leap, Your Honor. That is
7 not supported by the facts, and the People could argue
8 whatever they want to argue.

9 THE COURT: Okay. Thank you. I agree, Mr. Madden,
10 that the People are entitled to argue this. I think that is
11 reasonable inferences. Everything that Ms. Filo has stated
12 this morning about this particular issue that, you know,
13 there is a blindfold, there is objects that were described by
14 the children that apparently weren't found. So, yes, she
15 will be allowed to argue that without restrictions based on,
16 you know, reasonable interpretations, inferences of the
17 evidence.

18 Over the defense objection, I will not give 371 out
19 of abundance of caution.

20 MR. MADDEN: You mean over the --

21 THE COURT: I said I'm not going to give it out of
22 abundance of caution.

23 MR. MADDEN: Okay.

24 THE COURT: I'm giving the instruction. Over their
25 objection, I'm giving it -- their objection, I will not give
26 it. I'm ruling in your favor.

27 MR. MADDEN: That's what I thought.

28 THE COURT: So that's the ruling on that particular

1 point. So that concludes that. The instructions will be
2 ready sometime this afternoon. If you want to see if they
3 are ready, if you want to pick it up, that's fine. I will
4 make every effort to have it done as soon as possible. If
5 you are not here, they will be there first thing in the
6 morning.

7 MR. MADDEN: I don't want anybody to press. There
8 is no need for me to have it tonight. They will be read
9 tomorrow. As long as there is a set on my table tomorrow,
10 I'm satisfied.

11 THE COURT: You will have the instructions I read
12 to the jury to incorporate into your closing remarks as well.

13 MR. MADDEN: Thank you, Your Honor.

14 THE COURT: That concludes -- I will note for the
15 record too, we did take a break. Ms. Filo and Officer Pierce
16 talked to Mr. Madden about this new information. I indicated
17 it wasn't necessary to put this on the record, but there has
18 been discussion.

19 MR. MADDEN: Thank you, Your Honor. Nine o'clock?

20 THE COURT: Nine a.m.

21 (Whereupon, the Court recessed.)
22
23
24
25
26
27
28

1 STATE OF CALIFORNIA)
2 COUNTY OF SANTA CLARA)

3

4 I, JAMIE L. MIXCO, HEREBY CERTIFY THAT:

5 The foregoing is a full, true, and correct
6 transcript of the testimony given and proceedings had in the
7 above-entitled action taken on the above-entitled date; that
8 it is a full, true, and correct transcript of the evidence
9 offered and received, acts and statements of the Court, also
10 all objections of counsel, and all matters to which the same
11 relate; that I reported the same in stenotype to the best of
12 my ability, being the duly appointed and official
13 stenographic reporter of said Court, and thereafter had the
14 same transcribed into typewriting as herein appears.

15 I further certify that I have complied with CCP
16 237(a)(2) in that all personal juror identifying information
17 has been redacted if applicable.

18

19 Dated:

20

21

22

Jamie L. Mixco, C.S.R.
Certificate No. 12708

23

24 ATTENTION:
25 CALIFORNIA GOVERNMENT CODE
SECTION 69954(D) STATES:

26 "ANY COURT, PARTY, OR PERSON WHO HAS PURCHASED A TRANSCRIPT
27 MAY, WITHOUT PAYING A FURTHER FEE TO THE REPORTER, REPRODUCE
A COPY OR PORTION THEREOF AS AN EXHIBIT PURSUANT TO COURT
28 ORDER OR RULE, OR FOR INTERNAL USE, BUT SHALL NOT OTHERWISE
PROVIDE OR SELL A COPY OR COPIES TO ANY OTHER PARTY OR
PERSON."

EXHIBIT 3

(Vol. 17)

TO THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

---o0o---

THE PEOPLE OF THE STATE OF)
CALIFORNIA,)

Plaintiff - Respondent,)

v.)

No. C1223754

CRAIG RICHARD CHANDLER,)

Defendant - Appellant.)

COPY

VOLUME 17

PAGES 1571 - 1597

JULY 30, 2013

---o0o---

REPORTER'S TRANSCRIPT ON APPEAL
FROM THE JUDGMENT OF THE SUPERIOR COURT
OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SANTA CLARA
BEFORE THE HONORABLE ARTHUR BOCANEGRA, JUDGE, AND JURY

---o0o---

APPEARANCES:

FOR PLAINTIFF-RESPONDENT: OFFICE OF THE ATTORNEY GENERAL
BY: KAMALA D. HARRIS,
Attorney General of the State
of California

FOR DEFENDANT-APPELLANT: In Propria Persona

— — — o o — — —

DEFENDANT.

CASE NO. C1223754

— — — 00 — — —

JULY 30, 2013

— — — 0 0 — — —

JAMIE L. MIXCO
C.S.R. No. 12708

1 San Jose, California

July 30, 2013

2 PROCEEDINGS

3 THE COURT: We'll go on the record, and the record
4 will reflect that both counsel are present, Mr. Chandler is
5 present, the jury is not present in the courtroom at this
6 time.

7 This morning, the Court met with counsel about an
8 issue regarding one of the instructions, and it's my
9 understanding that, Mr. Madden, yesterday we discussed the
10 instructions and it was the Court's intent to give CALCRIM
11 225 and not CALCRIM 224. This morning, you provided me with
12 a memo, and you indicated you thought based on the facts and
13 circumstances of our case, that you thought 224 should be
14 given rather than 225, and that you were making that
15 particular request.

16 And as I understand it, Ms. Filo, you indicated you
17 had no objection to 224 being given, since it was the
18 defendant's request, and removing 225. That's basically a
19 summary as I understand what we talked about this morning.

20 Mr. Madden, you want to supplement the record?

21 MR. MADDEN: No, Your Honor. That's accurate. I'm
22 sure the Court has a copy of my memo in the file, in which I
23 offered a legal justification for my request, and that's all
24 I will add.

25 THE COURT: Okay.

26 Ms. Filo, any comments?

27 MS. FILO: Submitted, Your Honor.

28 THE COURT: Okay. So both sides more or less agree

1 with my accounts of our discussion. At the defense's
2 request, and no objection by the People, the Court will
3 substitute 224 from 225.

4 I may have made the record a little confusing. Ms.
5 Filo had requested that the Court give CALCRIM 371 dealing
6 with hiding evidence. Mr. Madden objected to that
7 instruction being given. And after listening to comments by
8 counsel, considering that particular instruction, the Court
9 decided that I was not going to give 371 based on the
10 defense's objection, over the People's request. I wasn't
11 sure if I confused the record a little bit yesterday about
12 the basis for not giving 371, but I just wanted to make those
13 comments.

14 Also, it's my understanding, Ms. Filo, you have the
15 amended Information you want to file.

16 MS. FILO: I do, Your Honor. Just for the
17 Court's -- just for the record, we just included the time
18 frame of Count 1 and Count 2 to be the beginning of the
19 school year, which is September 1, 2011, and in each of the
20 counts we went ahead and named the victims with just their
21 first name. We used that terminology throughout the course
22 of the trial, and I think at this point there is no reason
23 why they need to be referred to Jane Doe One and Jane Doe
24 Two. They have been identified in the record. I think it's
25 cleaner to have the Information reflect at least their first
26 names, and those are the only two changes in the Information.

27 THE COURT: Thank you. We'll have that filed at
28 this time.

1 MS. FILO: Thank you, Your Honor.

2 THE COURT: You've provided Mr. Madden a copy?

3 MS. FILO: Not yet.

4 MR. MADDEN: Somebody did. You sent it to the
5 Court?

6 MS. FILO: That's the clean copy, Your Honor. I
7 did -- just so the record is clear, I e-mailed a copy to
8 Court and counsel yesterday of what I refer to as the "clean
9 Information," which is the Information that could be read
10 with the jury instructions to the jury. That doesn't include
11 things like probation, limitations, and 290 registration,
12 things like that.

13 THE COURT: Right. So the amended Information is
14 being filed with the court. It's occurring right now, and
15 we'll hand you a copy in just a minute, Mr. Madden.

16 MR. MADDEN: The clean copy that's put in the
17 package, what's going to be read to the jurors?

18 THE COURT: Right. The clean copy is consistent
19 with the amended copy. While we're having that filed,
20 getting you a copy, Mr. Madden, you waive formal arraignment,
21 advisement of rights to the amended Information?

22 MR. MADDEN: Yes, Your Honor.

23 THE COURT: Mr. Chandler, your plea to the amended
24 Information is not guilty and you deny the allegations?

25 THE DEFENDANT: Yes, Your Honor.

26 THE COURT: Thank you. We'll go off the record.

27 (Whereupon, there was a discussion off the record.)

28 THE COURT: Thank you, ladies and gentlemen.

1 Record will reflect all members of the jury are present, both
2 counsel are present, Mr. Chandler is present in the
3 courtroom.

4 As I mentioned yesterday, I'm required to read the
5 instructions to you. You each should have a copy, and I will
6 proceed.

7 This Information alleges that Count 1, on or about
8 and between September 1, 2011 and January 6, 2012, in the
9 county of Santa Clara, state of California, the crime of lewd
10 and lascivious act on a child under 14, in violation of Penal
11 Code §288(a), a felony, was committed by Craig Richard
12 Chandler, who did willfully and lewdly commit a lewd and
13 lascivious act upon and with the body and certain parts and
14 members thereof Isabell Doe, a child under the age of 14
15 years, namely, 7, with the intent of arousing, appealing to,
16 and gratifying the lusts, passions, and sexual desires of the
17 defendant and of the child.

18 It is further alleged that the defendant, Craig
19 Richard Chandler, multiple victims, within the meaning of
20 Penal Code §667.61(b) and 667.61(e).

21 Count 2, on or about and between September 1, 2011
22 and November 1, 2011, in the county of Santa Clara, state of
23 California, the crime of lewd and lascivious act on a child
24 under 14, a felony, was committed by Craig Richard Chandler,
25 who did willfully and lewdly commit a lewd and lascivious act
26 upon and with the body and certain parts and members thereof
27 Becky Doe, a child under the age of 14 years, namely, 7, with
28 the intent of arousing, appealing to, and gratifying the

1 lustrs, passions, and sexual desires of the defendant and of
2 the child.

3 It is further alleged that the defendant, Craig
4 Richard Chandler, multiple victims, within the meaning of
5 Penal Code §667.61(b) and 667.61(e).

6 Count 3, on or about and between September 1, 2011
7 and January 10, 2012, in the county of Santa Clara, state of
8 California, the crime of lewd and lascivious act on a child
9 under 14, in violation of Penal Code §288(a), a felony, was
10 committed by Craig Richard Chandler, who did willfully and
11 lewdly commit a lewd and lascivious act upon and with the
12 body and certain parts and members thereof Laurie Doe, a
13 child under the age of 14 years, namely, 8, with the intent
14 of arousing, appealing to, and gratifying the lusts,
15 passions, and sexual desires of the defendant and of the
16 child.

17 It is further alleged that the defendant, Craig
18 Richard Chandler, multiple victims, within the meaning of
19 Penal Code §667.61(b) and 667.61(e).

20 Count 4, on or about and between September 1, 2010
21 and June 1, 2011, in the county of Santa Clara, state of
22 California, the crime of lewd and lascivious act on a child
23 under 14, in violation of Penal Code §288(a), a felony, was
24 committed by Craig Richard Chandler, who did willfully and
25 lewdly commit a lewd and lascivious act upon and with the
26 body and certain parts and members thereof Wendy Doe, a child
27 under the age of 14 years, namely, 9, with the intent of
28 arousing, appealing to, and gratifying the lusts, passions,

1 and sexual desires of the defendant and of the child.

2 It is further alleged that the defendant, Craig
3 Richard Chandler, multiple victims, within the meaning of
4 Penal Code §667.61(b) and 667.61(e).

5 Count 5, on or about and between September 1, 2010
6 and June 1, 2011, in the county of Santa Clara, state of
7 California, the crime of lewd and lascivious act on a child
8 under 14, in violation of Penal Code §288(a), a felony, was
9 committed by Craig Richard Chandler, who did willfully and
10 lewdly commit a lewd and lascivious act upon and with the
11 body and certain parts and members thereof Arleth Doe, a
12 child under the age of 14 years, namely, 8, with the intent
13 of arousing, appealing to, and gratifying the lusts and
14 sexual desires of the defendant and of the child.

15 It's further alleged the defendant, Craig Richard
16 Chandler, multiple victims, within the meaning of Penal Code
17 §667.61(b) and 667.61(e).

18 Members of the jury, I will now instruct you on the
19 law that applies to this case. Each of you has a copy of
20 these instructions to use in the jury room. The instructions
21 that you receive may be typed -- excuse me -- may be printed,
22 typed, or written by hand. Certain sections may have been
23 crossed out or added. Disregard any deleted sections and do
24 not try to guess what they might have been. Only consider
25 the final version of the instructions in your deliberations.

26 You must decide what the facts are. It is up to
27 all of you, and you alone, to decide what happened based only
28 on the evidence that has been presented to you in this trial.

1 Do not let bias, sympathy, prejudice, or public
2 opinion influence your decision. Bias includes, but is not
3 limited to, bias for or against the witnesses, attorneys,
4 defendant or alleged victims, based on disability, gender,
5 nationality, national origin, race or ethnicity, religion,
6 gender identity, sexual orientation, age, or socioeconomic
7 status.

8 You must follow the law as I explain it to you,
9 even if you disagree with it. If you believe that the
10 attorneys' comments on the law conflicts with my
11 instructions, you must follow my instructions.

12 Pay careful attention to all of these instructions
13 and consider them together. If I repeat any instruction or
14 idea, do not conclude that it is more important than any
15 other instruction or idea just because I repeated it.

16 Some words or phrases used during this trial have
17 legal meanings that are different from their meanings in
18 everyday use. These words and phrases will be specifically
19 defined in these instructions. Please be sure to listen
20 carefully and follow the definitions that I give you. Words
21 and phrases not specifically defined in these instructions
22 are to be applied using their ordinary, everyday meanings.

23 Some of these instructions may not apply, depending
24 on your findings about the facts of the case. Do not assume
25 just because I gave a particular instruction that I'm
26 suggesting anything about the facts. After you have decided
27 what the facts are, follow the instructions that do apply to
28 the facts as you find them.

1 Do not use the Internet or any other electronic
2 source, such as Facebook or Twitter, a dictionary, or any
3 other source of information or means of communication in any
4 way in connection with this case, either on your own or as a
5 group. Do not investigate the facts or the law or do any
6 research regarding this case, either on your own or as a
7 group. Do not conduct any tests or experiments or visit the
8 scene of any event involved in this case. If you happen to
9 pass by the scene, do not stop or investigate.

10 You have been given notebooks and may have taken
11 notes during the trial. You may use your notes during
12 deliberations. Your notes are for your own individual use to
13 help you remember what happened during the trial. Please
14 keep in mind that your notes may be inaccurate or incomplete.

15 If there is a disagreement about the testimony and
16 stipulations at trial, you may ask that the court reporter's
17 record be read to you. It is the record that must guide your
18 deliberations, not your notes. You must accept the court
19 reporter's record as accurate.

20 Please do not remove your notes from the jury room.

21 At the end of the trial, your notes will be
22 collected and destroyed.

23 It is alleged that the crime charged in Count 1
24 occurred on or about and between September 1, 2011 and
25 January 6, 2012; the crime charged in Count 2 occurred on or
26 about and between September 1, 2011 and November 1, 2011; the
27 crime charged in Count 3 occurred on or about and between
28 September 1, 2011 and January 10, 2012; and the crimes

1 charged in Counts 4 and 5 occurred on or about and between
2 September 1, 2010 and June 1, 2011.

3 The People are not required to prove that the crime
4 took place on any particular day. Only that it occurred
5 during the time period alleged from each count.

6 In this case, persons were called by their first
7 names, and occasionally the last name "Doe" was used. The
8 last name "Doe" was used only to protect their privacy. The
9 fact that a person was identified in this way is not
10 evidence. Do not consider this fact for any purpose.

11 Some testimony was given in Cantonese and Spanish.
12 An interpreter provided a translation for you at the time the
13 testimony was given. You must rely on the translation
14 provided by the interpreter, even if you understood the
15 language spoken by the witness. Do not retranslate any
16 testimony for other jurors.

17 The fact that a criminal charge has been filed
18 against the defendant is not evidence that the charge is
19 true. You must not be biased against the defendant just
20 because he has been arrested, charged with a crime, or
21 brought to trial.

22 A defendant in a criminal case is presumed to be
23 innocent. This presumption of innocence requires that the
24 People prove each element of the crime and special allegation
25 beyond a reasonable doubt. Whenever I tell you the People
26 must prove something, I mean they must prove it beyond a
27 reasonable doubt unless I specifically tell you otherwise.

28 Proof beyond a reasonable doubt is proof that

1 leaves you with an abiding conviction that the charge is
2 true. The evidence need not eliminate all possible doubt
3 because everything in life is open to some possible or
4 imaginary doubt.

5 In deciding whether the People have proved their
6 case beyond a reasonable doubt, you must impartially compare
7 and consider all of the evidence that was received throughout
8 the entire trial. Unless the evidence proves a defendant
9 guilty beyond a reasonable doubt, he is entitled to an
10 acquittal and you must find him not guilty.

11 Evidence is a sworn testimony of witnesses, the
12 exhibits admitted into evidence, and anything else I told you
13 to consider as evidence. Nothing that the attorneys say is
14 evidence. In their opening statements and closing arguments,
15 the attorneys discuss the case, but their remarks are not
16 evidence. Their questions are not evidence. Only the
17 witness's answers are evidence. The attorneys' questions are
18 significant only if they help you to understand the witness's
19 answers. Do not assume that something is true just because
20 one of the attorneys asked a question that suggested it was
21 true.

22 During the trial, the attorneys may have objected
23 to questions or move to strike answers given by the
24 witnesses. I ruled on objections according to the law. If I
25 sustained an objection, you must ignore the question. If the
26 witness was not permitted to answer, do not guess what the
27 answer might have been or why I ruled as I did. If I order
28 testimony stricken from the record, you must disregard it and

1 must not consider that testimony for any purpose.

2 You must disregard anything you saw or heard when
3 the court was not in session, even if it was done or said by
4 one of the parties or witnesses.

5 During the trial, you were told that the People and
6 the defense agreed or stipulated to certain facts. This
7 means that they both accept those facts as true. Because
8 there is no dispute about those facts, you must also accept
9 them as true.

10 Facts may be proved by direct or circumstantial
11 evidence or by a combination of both. Direct evidence could
12 prove a fact by itself. For example, if a witness testifies
13 he saw it raining outside before he came into the courthouse,
14 that testimony is direct evidence that it was raining.

15 Circumstantial evidence also may be called indirect
16 evidence. Circumstantial evidence does not directly prove
17 the fact to be decided, but is evidence of another fact or
18 group of facts from which you may logically and reasonably
19 conclude the truth of the fact in question. For example, if
20 a witness testifies that he saw someone come inside wearing a
21 raincoat covered with drops of water, that testimony is
22 circumstantial evidence because it may support a conclusion
23 that it was raining outside.

24 Both direct and circumstantial evidence are
25 acceptable types of evidence to prove or disprove the
26 elements of a charge, including intent and mental state and
27 acts necessary to a conviction, and neither is necessarily
28 more reliable than the other. Neither is entitled to any

1 greater weight than the other. You must decide whether a
2 fact in issue has been proved based on all of the evidence.

3 Before you may rely on circumstantial evidence to
4 conclude that a fact necessary to find the defendant guilty
5 has been proved, you must be convinced that the People have
6 proved each fact essentially to that conclusion beyond a
7 reasonable doubt.

8 Also, before you may rely on circumstantial
9 evidence to find the defendant guilty, you must be convinced
10 that the only reasonable conclusion supported by the
11 circumstantial evidence is that the defendant is guilty. If
12 you could draw two or more reasonable conclusions from the
13 circumstantial evidence, and one of those reasonable
14 conclusions points to innocence and another to guilt, you
15 must accept the one that points to innocence. However, when
16 considering circumstantial evidence, you must accept only
17 reasonable conclusions and reject any that are unreasonable.

18 You alone must judge the credibility or
19 believability of the witnesses. In deciding whether
20 testimony is true and accurate, use your common sense and
21 experience. You must judge the testimony of each witness by
22 the same standards, setting aside any bias or prejudice you
23 may have.

24 You may believe all, part, or none of any witness's
25 testimony. Consider the testimony of each witness and decide
26 how much of it you believe.

27 In evaluating a witness's testimony, you may
28 consider anything that reasonably tends to prove or disprove

1 the truth or accuracy of that testimony. Among the factors
2 that you may consider are:

3 How well could the witness see, hear, or otherwise
4 perceive the things about which the witness testified?

5 How well was the witness able to remember and
6 describe what happened?

7 What was the witness's behavior while testifying?

8 Did the witness understand the questions and answer
9 them directly?

10 Was the witness's testimony influenced by a factor
11 such as bias or prejudice, a personal relationship with
12 someone involved in the case, or a personal interest in how
13 the case is decided?

14 What was the witness's attitude about the case or
15 about testifying?

16 Did the witness make a statement in the past that
17 is consistent or inconsistent with his or her testimony?

18 How reasonable is the testimony when you consider
19 all of the other evidence in the case?

20 Did other evidence prove or disprove any fact about
21 which the witness testified?

22 Do not automatically reject testimony just because
23 of inconsistencies or conflicts. Consider whether the
24 differences are important or not. People sometimes honestly
25 forget things or make mistakes about what they remember.
26 Also, two people may witness the same event yet see or hear
27 it differently.

28 If you do not believe a witness's testimony that he

1 or she to longer remembers something, that testimony is
2 inconsistent with the witness's earlier statement on that
3 subject.

4 If you decide that a witness deliberately lied
5 about something significant in this case, you should consider
6 not believing anything that witness says. Or, if you think
7 the witness lied about some things, but told the truth about
8 others, you may simply accept the part that you think is true
9 and ignore the rest.

10 Neither side is required to call all witnesses who
11 may have information about the case or to produce all
12 physical evidence that might be relevant.

13 The testimony of only one witness could prove any
14 fact. Before you conclude that the testimony of one witness
15 proves a fact, you should carefully review all of the
16 evidence.

17 If you determine there is a conflict in the
18 evidence, you must decide what evidence, if any, to believe.
19 Do not simply count the number of witnesses who agree or
20 disagree on a point and accept the testimony of the greater
21 number of witnesses. On the other hand, do not disregard the
22 testimony of any witness without a reason or because of
23 prejudice or a desire to favor one side or the other. What
24 is important is whether the testimony or any other evidence
25 convinces you, not just the number of witnesses who testify
26 about a certain point.

27 You have heard evidence of statements that a
28 witness made before the trial. If you decide that the

1 witness made those statements, you may use those statements
2 in two ways:

3 One, to evaluate whether the witness's testimony in
4 court is believable;

5 and two, as evidence that the information to those
6 earlier statements is true.

7 You have heard testimony from a child who was age
8 10 or younger. As with any other witness, you must decide
9 whether the child gave truthful and accurate testimony.

10 In evaluating the child's testimony, you should
11 consider all of the factors surrounding that testimony,
12 including the child's age and level of cognitive development.

13 When you evaluate the child's cognitive
14 development, consider the child's ability to perceive,
15 understand, remember, and communicate.

16 While a child and adult witness may behave
17 differently, that difference does not mean that one is any
18 more or less believable than any other. You should not
19 discount or distrust the testimony of a witness just because
20 he or she is a child.

21 Witnesses were allowed to testify as experts and to
22 give opinions. You must consider the opinions, but you are
23 not required to accept them as true or correct. The meaning
24 and importance of any opinion are for you to decide. In
25 evaluating the believability of an expert witness, follow the
26 instructions about the believability of witnesses generally.
27 In addition, consider the expert's knowledge, skill,
28 experience, training and education, the reasons the expert

1 gave for any opinion, and the facts or information on which
2 the expert relied in reaching that opinion. You must decide
3 whether information on which the expert relied was true and
4 accurate. You may disregard any opinion that you find
5 unbelievable, unreasonable, or unsupported by the evidence.

6 An expert witness may be asked a hypothetical
7 question. A hypothetical question asks the witness to assume
8 certain facts are true and to give an opinion based on the
9 assumed facts. It is up to you to decide whether an assumed
10 fact has been proved. If you conclude that an assumed fact
11 is not true, consider the effect of the expert's reliance on
12 that fact in evaluating the expert's opinion.

13 Withins who were not testifying as experts gave
14 their opinions during the trial. You may, but are not
15 required to, accept those opinions as true or correct. You
16 may give the opinion whatever weight you think is
17 appropriate. Consider the extent of the witness's
18 opportunity to perceive -- excuse me -- to perceive the
19 matters on which his or her opinion is based, the reasons the
20 witness gave for any opinion, and the facts or information on
21 which the witness relied in forming that opinion. You must
22 decide whether information on which the witness relied is
23 true and accurate. You may disregard all or any part of an
24 opinion that you find unbelievable, unreasonable, or
25 unsupported by the evidence.

26 A defendant has an absolute constitutional right
27 not to testify. He or she may rely on the state of the
28 evidence and argue that the People have failed to prove the

1 charges beyond a reasonable doubt. Do not consider for any
2 reason at all the fact that the defendant did not testify.
3 Do not discuss that fact during your deliberations or let it
4 influence your decision in any way.

5 The People are not required to prove that the
6 defendant had a motive to commit any of the crimes charged.
7 In reaching your verdict, you may, however, consider whether
8 the defendant had a motive. Having a motive may be a factor
9 tending to show that the defendant is guilty. Not having a
10 motive may be a factor tending to show the defendant is not
11 guilty.

12 Conviction of a sexual assault crime may be based
13 on the testimony of a complaining witness alone.

14 The crimes charged in Counts 1, 2, 3, 4, and 5 and
15 the lesser included crime require proof of union or joint
16 operation of act and wrongful intent.

17 The following crime requires general criminal
18 intent: Battery.

19 For you to find a person guilty of this crime, that
20 person must not only commit the prohibited act, but must do
21 so with wrongful intent. A person acts with wrongful intent
22 when he or she intentionally does a prohibited act. However,
23 it is not required that he or she intend to break the law.
24 The act required is explained in the instructions for that
25 crime.

26 The crime of lewd and lascivious act on a child
27 under 14 years requires a specific intent. For you to find a
28 person guilty of this crime, that person must not only

1 intentionally commit the prohibited act, but must do so with
2 a specific intent. The act and the specific intent required
3 are explained in the instructions for that crime.

4 The defendant is charged in Counts 1, 2, 3, 4 and 5
5 with committing a lewd and lascivious act on a child under
6 the age of 14, in violation of Penal Code §288(a).

7 To prove that the defendant is guilty of this
8 crime, the People must prove that:

9 1(a), the defendant willfully touched any part of a
10 child's body, either on the bare skin or through the
11 clenching;

12 or 1(b), the defendant willfully caused a child to
13 touch the defendant's body, either on the bare skin or
14 through the clothing;

15 2, the defendant committed the act with the intent
16 of arousing, appealing to, or gratifying the lusts, passions,
17 or sexual desires of himself or the child;

18 and 3, the child was under the age of 14 years at
19 the time of the act.

20 The touching need not be done in a lewd or sexual
21 manner.

22 Someone commits an act willfully when he or she
23 does it willfully or on purpose. It is not required that he
24 or she intend to break the law, hurt someone else, or gain
25 any advantage. Actually arousing, appealing to, or
26 gratifying the lusts, passions, or sexual desires of a
27 perpetrator or child is not required.

28 It is not a defense the child may have consented to

1 the act.

2 If you find the defendant guilty of two or more sex
3 offenses, as charged in Counts 1, 2, 3, 4 and 5, you must
4 decide whether the People have proved the additional
5 allegation that those crimes were committed against more than
6 one victim.

7 The People have the burden of proving this
8 allegation beyond a reasonable doubt. If the People have not
9 met this burden, you must find that this allegation has not
10 been proved.

11 The crime of battery, violation of Penal Code
12 §243(a), a misdemeanor, is a lesser included offense of lewd
13 and lascivious act of a child under 14 years, in violation of
14 Penal Code §288(a), a felony, as charged in Counts 1, 2, 3,
15 4, and 5.

16 To prove that the defendant is guilty of this
17 crime, the People must prove that:

18 One, the defendant willfully and unlawfully touched
19 Isabell, Becky, Laurie, Wendy, or Arleth Doe in a harmful or
20 offensive manner.

21 Someone commits an act willfully when he or she
22 does it willingly or on purpose. It is not required that he
23 or she intend to break the law, hurt someone else, or gain
24 any advantage.

25 The slightest touching could be enough to commit a
26 battery if it is done in a rude or angry way. Making contact
27 with another person, including through his or her clothing,
28 is enough. The touching does not have to cause pain or

1 injury of any kind.

2 The touching can be done indirectly by causing an
3 object to touch the other person.

4 For the offenses alleged, Counts 1 through 5, the
5 People have presented evidence of more than one act to prove
6 that the defendant committed these offenses. You must not
7 find the defendant guilty unless:

8 One, you all agree that the People have proved that
9 the defendant committed at least one of these acts and you
10 all agree on which act he committed for each offense;

11 Or two, you all agree that the People have proved
12 that the defendant committed all of the acts alleged to have
13 occurred during this time period and proved that the
14 defendant committed at least the number of offenses charged.

15 Each of the counts charged in this case is a
16 separate crime. You must consider each count separately and
17 return a separate verdict for each one.

18 If you all find that the defendant is not guilty of
19 a greater charged crime, you may find him guilty of a lesser
20 crime if you are convinced beyond a reasonable doubt that the
21 defendant is guilty of that lesser crime. A defendant may
22 not be convicted of both a greater and lesser crime for the
23 same conduct.

24 I will explain to you which charges are affected by
25 this instruction:

26 Misdemeanor battery, a violation of Penal Code
27 §243(a), is a lesser crime of felony lewd or lascivious act
28 on a child under 14 years, a violation of Penal Code §288(a)

1 as charged in Counts 1, 2, 3, 4 and 5.

2 It is up to you to decide the order in which you
3 consider each crime and the relevant evidence, but I can
4 accept a verdict of guilty of a lesser crime only if you have
5 found the defendant not guilty of the corresponding greater
6 crime.

7 You will receive verdict forms of guilty and not
8 guilty of the greater crime and also verdict forms of guilty
9 and not guilty of the lesser crime. Follow these directions
10 before you give me any completed and signed, final verdict
11 form. Return any unused verdict forms to me unsigned:

12 One, if all of you agree the People have proved
13 that the defendant is guilty of the greater crime, complete
14 and sign the verdict form of guilty for that crime. Do not
15 complete or sign any other verdict form for that count.

16 Two, if all of you cannot agree whether the People
17 have proved that the defendant is guilty of the greater
18 crime, inform me only that you could not reach an agreement
19 and do not complete or sign any verdict form for that count.

20 Three, if all of you agree that the People have not
21 proved that the defendant is guilty of the greater crime and
22 you also agree that the People have proved that he is guilty
23 of the lesser crime, complete and sign the verdict form for
24 not guilty of the greater crime and the verdict form for
25 guilty of the lesser crime.

26 Four, if all of you agree that the People have not
27 proved that the defendant is guilty of the greater crime --
28 excuse me -- not guilty -- defendant is guilty of the greater

1 or lesser crime, complete and sign the verdict form of not
2 guilty -- let me re-read number four.

3 Number four, if all of you have agreed that the
4 People have not proved that the defendant is guilty of the
5 greater or lesser crime, complete the signed form for not
6 guilty of the greater crime and the verdict form for not
7 guilty of the lesser crime.

8 Five, if all of you agree that the People have not
9 proved that the defendant is guilty of the greater crime, but
10 all of you cannot agree on a verdict for the lesser crime,
11 complete and sign the verdict form of the greater crime and
12 inform me only that you cannot reach an agreement about the
13 lesser crime.

14 Whenever I tell you the People must prove
15 something, I mean they must prove it beyond a reasonable
16 doubt unless I specifically tell you otherwise.

17 Ladies and gentlemen, that concludes the reading of
18 the instructions I'm going to give you at this time. The
19 next instruction, which is at page 33 of your packet, 3550, I
20 will read to you after the attorneys have finished their
21 closing remarks and you begin your deliberations.

22 If there is nothing further, Counsel, I'm going to
23 excuse the jurors. Okay.

24 All members of the jury, you are excused at this
25 time, and I would ask you to please leave your jury
26 instructions and notebooks on your chairs. They will be
27 there tomorrow morning when you come back. I'll order all
28 members of the jury to report to the jury assembly room

1 tomorrow morning at 9:00 a.m. At that time, we'll bring you
2 into the courtroom and you will hear Ms. Filo give her
3 closing remarks, we'll take a recess, Mr. Madden will give
4 his closing remarks, we'll take a recess, and then Ms. Filo
5 will give her rebuttal, I will read the last instruction, you
6 will begin deliberating, and we'll send all of the exhibits
7 into the deliberation room.

8 I could tell you, yesterday after the discussions
9 with attorneys, all of the exhibits were admitted into
10 evidence, except one defense exhibit. Okay.

11 And with that, I'll excuse you all. Please have a
12 good rest of the day and we'll see you tomorrow morning at
13 9:00 a.m. Thank you.

14 Okay. Record will reflect that the jury has left
15 the courtroom. Both counsel and Mr. Chandler is present.
16 I'll order both counsel here tomorrow morning at 9:00 a.m.,
17 and please try to get here a little earlier. It's my
18 expectation to have the jurors called up exactly at 9 so we
19 could proceed.

20 MR. MADDEN: Thank you, Your Honor.

21 MS. FILO: Judge, it still seems there is some
22 problem with the Information as it relates to the allegation.
23 It's reading:

24 It is further alleged that the defendant, Craig
25 Richard Chandler, multiple victims. So this is how our
26 computer system generates the allegation, but that's still
27 clearly not correct. So I'm going to have to go back to my
28 office and figure out what it's supposed to say, because

1 clearly some word is missing there, but I'll do that and let
2 the Court know as soon as I can.

3 THE COURT: Yes. Go off the record.

4 (Whereupon, the Court recessed.)
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 STATE OF CALIFORNIA)
2 COUNTY OF SANTA CLARA)

4 I, JAMIE L. MIXCO, HEREBY CERTIFY THAT:

5 The foregoing is a full, true, and correct
6 transcript of the testimony given and proceedings had in the
7 above-entitled action taken on the above-entitled date; that
8 it is a full, true, and correct transcript of the evidence
9 offered and received, acts and statements of the Court, also
10 all objections of counsel, and all matters to which the same
11 relate; that I reported the same in stenotype to the best of
12 my ability, being the duly appointed and official
13 stenographic reporter of said Court, and thereafter had the
14 same transcribed into typewriting as herein appears.

15 I further certify that I have complied with CCP
16 237(a)(2) in that all personal juror identifying information
17 has been redacted if applicable.

18
19 Dated:

20
21
22 _____
23 Jamie L. Mixco, C.S.R.
Certificate No. 12708

24 ATTENTION:
25 CALIFORNIA GOVERNMENT CODE
SECTION 69954(D) STATES:

26 "ANY COURT, PARTY, OR PERSON WHO HAS PURCHASED A TRANSCRIPT
27 MAY, WITHOUT PAYING A FURTHER FEE TO THE REPORTER, REPRODUCE
28 A COPY OR PORTION THEREOF AS AN EXHIBIT PURSUANT TO COURT
ORDER OR RULE, OR FOR INTERNAL USE, BUT SHALL NOT OTHERWISE
PROVIDE OR SELL A COPY OR COPIES TO ANY OTHER PARTY OR
PERSON."

EXHIBIT 3

(Vol. 18)

TO THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

---o0o---

THE PEOPLE OF THE STATE OF)
CALIFORNIA,)

Plaintiff - Respondent,)

v.)

No. C1223754

CRAIG RICHARD CHANDLER,)

Defendant - Appellant.)

COPY

VOLUME 18

PAGES 1598 - 1671

JULY 31, 2013

---o0o---

REPORTER'S TRANSCRIPT ON APPEAL
FROM THE JUDGMENT OF THE SUPERIOR COURT
OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SANTA CLARA
BEFORE THE HONORABLE ARTHUR BOCANEGRA, JUDGE, AND JURY

---o0o---

APPEARANCES:

FOR PLAINTIFF-RESPONDENT: OFFICE OF THE ATTORNEY GENERAL
BY: KAMALA D. HARRIS,
Attorney General of the State
of California

FOR DEFENDANT-APPELLANT: In Propria Persona

THIS TRANSCRIPT IS PROTECTED UNDER GOVERNMENT CODE SECTION 69954 (d) 1599

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SANTA CLARA
BEFORE THE HONORABLE ARTHUR BOCANEGRA, JUDGE, AND JURY
DEPARTMENT NO. 37

---o0o---

THE PEOPLE OF THE)	
STATE OF CALIFORNIA,)	
)	
PLAINTIFF,)	
)	CASE NO. C1223754
v.)	
)	
)	
CRAIG RICHARD CHANDLER,)	
)	
)	
DEFENDANT.)	
_____	/	

---o0o---

REPORTER'S TRANSCRIPT OF PROCEEDINGS
JULY 31, 2013

---o0o---

APPEARANCES:

FOR THE PEOPLE:	ALISON FILO Deputy District Attorney
FOR THE DEFENDANT:	BRIAN MADDEN Attorney at Law
OFFICIAL COURT REPORTER:	JAMIE L. MIXCO C.S.R. No. 12708

1 San Jose, California July 31, 2013

2 PROCEEDINGS

3 THE COURT: We'll go on the record. Record will
4 reflect that both counsel are present. Mr. Chandler is
5 present. The jury is not present in the courtroom.

6 Yesterday, Mr. Madden and Ms. Filo contacted the
7 Court, indicated she wanted to file another amended
8 Information, number one. And number two, she was going to
9 ask for an additional jury instruction, which is basically a
10 sentence.

11 Is that more or less correct, Ms. Filo?

12 MS. FILO: It is, Your Honor. Just so the record
13 is clear, I copied Mr. Madden on that e-mail as well.

14 THE COURT: Thank you.

15 MS. FILO: The second amended Information has the
16 proper language as it relates to the special allegation. For
17 some reason, when our computer was generating that language
18 in the previous versions of the Information, it was leaving
19 out some language, so we actually had to input it by hand.
20 We've done that. It's the only change in the Information,
21 and I sent both the formal second amended Information and the
22 clean one to go to the jury, should that be necessary.

23 THE COURT: Have you had a chance to look at that,
24 Mr. Madden?

25 MR. MADDEN: Um, I actually haven't. She e-mailed
26 it to me, but I'm -- it's only adding words; right? I mean,
27 it's a --

28 MS. FILO: Judge, all it says is: Further alleged

1 that the defendant, Craig Chandler, and then adds the
2 language, has been convicted in the present case or cases of
3 committing an offense specified in the (c) against, and then
4 picks up where it left off, multiple victims, within the
5 meaning of Penal Code §667.61(b).

6 MR. MADDEN: I have no objection to that.

7 THE COURT: That is a proper amendment. What I'm
8 going to do, if there is no objection, I'm going to provide
9 each juror with a copy of page 1 and 2 that they have in
10 their packet, has the current information. We're going to
11 replace that with pages 1, 2, and 2-A because the last
12 allegation is on the last page. I'm going to ask each juror
13 to substitute it in. I'm going to read it to them, I'm going
14 to explain to them what the change is, and I'll clarify the
15 fact that this is an allegation and it still has to be
16 proven. That issue is addressed.

17 Your next issue, Ms. Filo.

18 MS. FILO: In thinking upon the jury instructions
19 and creating my closing argument, it occurs to me that the
20 definition of evidence that's currently in CALCRIM talks
21 about testimony and writings, and it gives an example of both
22 direct and circumstantial evidence. The one thing it doesn't
23 address is, the evidence is anything that could be presented
24 to the senses, and that really is the definition of the
25 Evidence Code that is really left out of the CALCRIM
26 instruction. And I would ask that the Court provide that
27 further definition to the court. The actual definition in
28 the Evidence Code is, quote, Evidence is testimony, writings,

1 material objects, or things presented to the senses that are
2 offered to prove the existence or non-existence of the act.

3 MR. MADDEN: I have no objection.

4 THE COURT: What I will do, Ms. Filo, if there is
5 no objection, CALCRIM 222, the first paragraph: Evidence is
6 the sworn testimony of witnesses, the exhibits admitted into
7 evidence, and anything else I told you to consider as
8 evidence.

9 MR. MADDEN: I'm sorry, I will let you finish.

10 THE COURT: Okay. That's what the instruction
11 reads right now that I read to them. What I was going to
12 propose to add was the next, like, paragraph sentence:
13 Evidence also means writings, material objects, or other
14 things presented to the senses that are offered to prove the
15 existence on non-existence of a fact, which is right out of
16 the Evidence Code, which is 140.

17 MS. FILO: Thank you. That will be fine.

18 THE COURT: What I'm going to do with CALCRIM 222
19 is ask the jurors to replace their page 10 with this page,
20 and I will read to them and say this was inadvertently left
21 out and I apologize.

22 MS. FILO: Okay. Thank you.

23 THE COURT: So I'm going to ask the clerk, if you
24 could put each copy and take the last one, which is 240.

25 (Whereupon, there was a discussion off the record.)

26 THE COURT: We'll go back on the record. Earlier,
27 Ms. Filo indicated she had an amended Information. We're
28 going to have that filed with the court.

1 Mr. Madden, do you waive formal arraignment,
2 advisement of rights?

3 MR. MADDEN: Yes, Your Honor.

4 THE COURT: Mr. Chandler, to the amended
5 Information, to all charges, your pleas are not guilty?

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: And you deny the allegations?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: Okay. Thank you.

10 We'll call the jury up at this time.

11 (Whereupon, a brief recess was taken.)

12 THE COURT: Thank you, ladies and gentlemen. The
13 record will reflect all members of the jury are present, both
14 counsel are present, Mr. Chandler is present.

15 Before we begin with closing remarks, ladies and
16 gentlemen of the jury, you will notice that we left some
17 documents on your chair. There is basically four pages.
18 Pages 1, 2, and 2-A are the copy of the Information. And I'm
19 going to ask each juror if you could please take pages 1, 2
20 and 2-A out and replace those with your present page 1 and 2
21 and remove page 1 and 2. I will explain why I'm doing that
22 in just a moment.

23 It appears that you all have done that. Thank you
24 very much. The pages 1, 2 and 2-A reflect an amended
25 Information that was filed by the People. Again, the
26 Information contains the alleged charges and allegations.
27 The reason for the change is the special allegation in Counts
28 1, 2, 3, 4, and 5, there were some words missing, so we

1 amended it to correctly allege the allegation.

2 Now I'm going to re-read that. The counts remain
3 exactly the same. There has been no change.

4 The allegation in Count 1 -- this is on page 1 --
5 states, it is further alleged that the defendant, Craig
6 Chandler, has been convicted in the present case or cases of
7 committing an offense specified in (c) against multiple
8 victims, within the meaning of Penal Code §667.61(b) and
9 667.61(e).

10 That allegation is identical in Counts 2, 3, 4, and
11 5, which is reflected in the new pages 1, 2, and 2-A.

12 The next change, ladies and gentlemen, is as to
13 page 10 of your instructions, CALCRIM 222. I'm going to ask
14 you to replace the new page from what we gave you with your
15 old page and have that page removed. And I'll explain the
16 reason for that in just a moment.

17 The new page 10 at CALCRIM 222 there was
18 essentially a sentence that was inadvertently left out, and
19 that sentence is now included in lines 5 and 6. The entire
20 instruction remains the same. There is no changes to it.
21 It's just this addition.

22 And I'm going to read the addition, starting with
23 the beginning at line 3, it says:

24 Evidence is the sworn testimony of witnesses, the
25 exhibits admitted into evidence, and anything else I told you
26 to consider as evidence. Evidence also means writings,
27 material objects, or other things presented to the senses
28 that are offered to prove the existence or non-existence of

1 the fact.

2 So with that addition, that particular instruction
3 remains the same, but as I said, that sentence was
4 inadvertently left out. So we're including it at this time.

5 With those modifications, ladies and gentlemen,
6 those are all the instructions that I have to read to you at
7 this point. As I mentioned, there will be one more
8 instruction I will read to you after closing remarks are
9 concluded and before you begin your deliberations.

10 So with that, Ms. Filo, are you prepared to proceed
11 with closing remarks?

12 MS. FILO: Thank you, Your Honor.

13 Seven- and eight-year-old little girls in a locked
14 classroom with their male teacher while they are blindfolded
15 and something is put in their mouth. They describe the thing
16 as round, gooey, kind of hard, kind of soft. It felt like
17 skin. It went all the way back into her mouth and it made
18 her gag or choke. It tasted bad. After a minute, the gooey,
19 salty, stuff came out. It dripped onto her jacket, onto her
20 pants. She had to clean herself up.

21 The hairs on the back of your neck should be
22 standing on end. You should be mortified and horrified by
23 the very basic facts of this case. In every case I've ever
24 tried, in every case I've ever watched, I see this phenomenon
25 where we come into the courtroom and we dissect things. We
26 talk about: Well, how long was it there? What color was the
27 carpet? What were you wearing? What happened right before?
28 What happened right after? And we talk about things like,

1 the decedent or the victim, and we talk a lot about trees and
2 we forget to talk about the forest.

3 These little girls sat in a classroom alone,
4 blindfolded, while a teacher put something in their mouth.
5 We ask you to be fair and impartial judges of the facts. I
6 stand up every time you walk in and out of the courtroom
7 because you judge, just like Judge Bocanegra does, you judge
8 the facts. But there is no box outside these courtroom doors
9 where we say please deposit your common sense here and then
10 take a seat as a juror. You are here because we want you to
11 use your common sense. We want you to use your everyday
12 experience. We want you to listen to your gut.

13 Blindfolded, alone in a classroom with a male
14 teacher while something is put in their mouth.

15 You all have the jury instructions now. Those jury
16 instructions are really the language and the mechanism by
17 which you get to give your gut a name. It's the way you get
18 to process that information and legally put a name on it, and
19 the name on it is child molestation. That's the name.
20 That's what you know in your gut happened every single time
21 Craig Chandler pulled one of these little girls into that
22 classroom and did those unspeakable things to them.

23 What's the law? What's the law that you will have
24 to follow in order to find him guilty? Craig Chandler is
25 charged with five counts of lewd and lascivious acts on a
26 child under 14. It is the touching of any part of a child's
27 body -- bare skin or through the clothing does not matter --
28 with the intent of arousing, appealing to, or gratifying the

1 lusts, passions, or sexual desires of himself or the child.
2 The child was under the age of 14 years old, and there is no
3 defense that the child may have consented to the act that she
4 didn't fight back in any way.

5 So why charge that? First of all, the charging
6 decisions are made by the office of the District Attorney.
7 We make those decisions. These girls describe lots of acts.
8 Why just one? Why are you just asked to decide one? Because
9 you only have to unanimously agree that one act occurred.
10 Only one act is alleged per victim. You can believe that
11 many acts occurred. As long as you unanimously agree that
12 one act occurred as to each victim and you believe that
13 beyond a reasonable doubt, your verdict is guilty. It's
14 called a unanimity instruction. It's in your packet. But as
15 long as you all agree at least one act occurred beyond a
16 reasonable doubt as to each victim, that is your verdict.

17 Any lascivious contact is sufficient. Anything.
18 Touching an arm, touching a leg, touching a foot, if it is
19 done with lascivious intent, with sexual intent, the crime
20 has been proven.

21 So how do you evaluate that testimony and how do
22 you decide whether or not those elements have been met? This
23 has been in the grand scheme of sexual assault trials kind of
24 a longer trial. It was over two weeks ago that young Isabell
25 came in to testify for you, and I want to put their names up
26 there and I want to remind you of those girls, of those
27 children that came in here to the courtroom.

28 Isabell was that precious, precious baby who came

1 in and said, "Well, my name is Isabell." And His Honor said,
2 "So, can I call you Isabella?" And she said, "Well, you can,
3 but that's not my name."

4 Becky can't remember anything. She doesn't want to
5 remember anything. She told you that when I came to her
6 house to serve her with a subpoena, her entire family started
7 crying. They want no part of this, but she said a few things
8 I found interesting; right? "I have dreams about Mr.
9 Chandler's classroom that I don't like."

10 You heard from little Laurie, who could just barely
11 say her own name. She has no power. That poor little girl
12 could barely say her own name. She did her best. But what
13 she told you over and over and over again is, "I have always
14 told the truth. I'm not lying about anything."

15 Wendy, that smart, smart, smart little
16 nine-year-old who says, "Well, I bit down and I thought that
17 was kind of curious when he said 'don't bite' because I
18 thought: How did he know I bit down?" Excellent point.
19 Excellent, excellent point.

20 And poor Arleth, who thought she was going to go to
21 jail for telling her story.

22 We're going to talk a lot more about what the girls
23 individually said, but I think it's important for all of us
24 to reach back in our memories to two, two and a half weeks
25 ago and remember each one of those girls as individuals and
26 as little people.

27 So you did hear their statements here in court.
28 Some of them were relatively incomplete. Remember, that for

1 some of these girls, this now happened almost three years
2 ago. That's forever to a child. Think about when your
3 cognitive memory really starts. Most people will say it's
4 about five years old where they have first memories of being
5 a child. These girls are now nine and ten. Something
6 happened to them when they were seven. In their cognitive
7 lifetime, that's 50 percent of their lifetime ago. If
8 somebody asked me what I was doing -- I won't tell you how
9 old I am -- but more than 20 years ago, that I will be in
10 trouble, you know. You just don't remember those kinds of
11 things in the kind of detail we're asking them to recall.

12 And our -- the California legislature knows this
13 and they passed a special Evidence Code, Evidence Code §1360.
14 And what it says is, it is fair for our jurors to hear
15 statements from children under ten given as close in time as
16 possible to those events. That's why you get to hear those
17 videotapes. That's why you get to hear their descriptions of
18 sexual assault as soon in time as possible to the events
19 having occurred, because we all know that children's memories
20 lapse, all of our memories lapse, but theirs particularly.

21 So you have the videotapes, which I submit to you
22 is probably some, if not the most, important evidence in this
23 entire case.

24 What is evidence? What are you looking at? What
25 are you trying to determine? We talked a lot during this
26 trial, over the course of the trial, even in jury selection,
27 about the difference between direct and circumstantial
28 evidence. But evidence is anything presented to the senses:

1 touch, smell, sound, sight. Do not believe that just because
2 these girls couldn't see what was happening to them, that
3 they weren't experiencing and recounting direct evidence,
4 because they were.

5 Circumstantial -- sorry. Direct evidence is
6 evidence that could prove a fact by itself. It is the fact I
7 saw the gun go off. I -- but it could also be, I heard the
8 rain. I know what rain sounds like and I heard rain. I
9 heard my sister. I know it's her voice because I know her
10 voice. Hearing, sight, touch, smell, those are all perfectly
11 acceptable forms of direct evidence.

12 Circumstantial evidence is evidence of another fact
13 or group of facts where you have to interpret them in order
14 to get to your primary fact. They're little pieces of the
15 puzzle, but both of them are totally acceptable ways of
16 proving a case. We have cases that are entirely
17 circumstantial evidence. We have cases that are entirely
18 direct evidence. But His Honor has already told you that
19 both forms of evidence are completely acceptable and carry
20 the same weight. It's contrary to what we hear on television
21 or what we might think, but it is, in fact, the law.

22 So, in this case I want to talk first actually
23 about the circumstantial evidence and how we could
24 distinguish it from what really is direct evidence.

25 Mary Montgomery. She had the classroom right next
26 to Mr. Chandler and said that she heard a student pounding on
27 the door and it was enough to catch her attention, so she
28 went outside. She saw Mr. Chandler's kids playing, and she

1 looked at the student and said, "What are you doing? And he
2 said, "Well, the door is locked." She could see them trying
3 to get the door open, and then the door opens.

4 This is circumstantial evidence that Mr. Chandler
5 will be and has been found in his room with the locked door.
6 We don't know if another child was in there. We don't know
7 if one of our victims was in there. What we know is he's in
8 a classroom with the door locked while his kids are just out
9 playing.

10 Dorothy Catangay. She shares that adjoining door
11 that goes between Mr. Chandler's classroom and the one behind
12 it. What did she say? Never in eight years, not one single
13 time did she walk through that door unannounced. That door
14 was for all practical purposes locked. Craig Chandler was
15 totally isolated and alone in that room.

16 She also gave us another interesting piece of
17 circumstantial evidence. I asked her, As a second grade
18 teacher, with 20 years of experience, can you think of any
19 educational purpose for blindfolding a child in a classroom
20 alone and putting something in their mouth? No.
21 Unequivocally, she said no.

22 Then, lastly, she says that Craig Chandler would
23 normally arrive at school about 7:30. She was one of the
24 first three teachers to arrive on the school grounds every
25 morning. And Mr. Madden tried awfully hard to say, Oh, he
26 was one of the ones that came early. No, he wasn't. She
27 repeatedly said, No. No, he wasn't one of the early
28 teachers. He got there around 7:30.

1 Why is that important? It's important because of
2 what Armando Lara tells us. Armando Lara was the vice
3 principal, and he says on January 10th, the day after Luisana
4 made a report to law enforcement, the very next day, Mr.
5 Chandler is in his classroom at least 45 minutes, probably an
6 hour earlier than he's ever been there before, in a locked
7 classroom with cleaning supplies.

8 Not only is he there in a locked classroom with
9 cleaning supplies, but he's there after Sean Pierce tells him
10 do not to go back to campus. And I guarantee you we will
11 hear Det. Pierce didn't have the authority to tell my client
12 not to go back to school. He's not authorized to give that
13 kind of command to someone. You're being investigated for
14 child molestation by the San Jose Police Department, and a
15 guy with handcuffs, a badge, and a gun tells you don't go
16 back to the campus, you know what, No problem, dude. I'm not
17 going back there. You have to be a desperate man to violate
18 that kind of order.

19 Other circumstantial evidence that we have in this
20 case is Hilda Keller. She's even a little bit hard to
21 remember because the defense had no questions for her. Let's
22 get that woman in and out of here as quickly as possible,
23 says the defense. Because what she says is, Based on the
24 entirety of my relationship with Mr. Chandler, I felt like he
25 was being overly sexual towards me. And you know what he
26 wanted to ask about? My feet. He wanted to take pictures
27 and massage my feet and it made me highly uncomfortable.

28 So Annie Doe was shockingly a defense witness. We

1 didn't call her. They did. I assume that they called her
2 because they thought she would provide some evidence, some
3 explanation for the semen that's found in the classroom. She
4 didn't. But what she did give us is some other very
5 interesting circumstantial evidence. The defendant can't get
6 an erection in a consensual encounter with a woman at her
7 home. Remember she said, "We couldn't perform?" That's not
8 his preferred location. But in a classroom with little
9 chairs, with artwork all over the place, ejaculation is
10 almost immediate and uncontrollable. She says that the
11 entire episode is over within a minute. She said it was
12 unbelievably fast.

13 And Mr. Madden asked Kristin Cardosa, remember the
14 DNA expert, and said, Ms. Cardosa, I would like to give you a
15 hypothetical. Let's assume that Mr. Chandler had consensual
16 sex in a classroom with an adult woman and touched himself
17 afterwards, then somehow put his hands on the chairs, move
18 these chairs around, would that explain the semen that was on
19 the chairs? No. Well, why not? Because these aren't
20 transfer stains. This isn't like she described a ketchup
21 packet, where you smear your finger, you get a smear. It's
22 called a transfer stain. It's something decidedly different
23 than what you could view with the naked eye on these chairs,
24 which are drops. She called them direct deposits.

25 We have some other circumstantial evidence in this
26 case. Lyn Vijayendran was the principal at the time of
27 October of 2011, when Becky's mother came to her with a
28 jacket on it that had a Monica Lewinsky-type stain. Brought

1 it to the principal and said, He's doing this thing to my
2 daughter. I don't like it. Move her to another classroom.
3 And they get a full statement from Becky. And I would submit
4 to you that that statement, which you all will have in
5 evidence. It's the three pages of handwritten notes. Some
6 of them are quoted here on the bottom. They are in
7 quotation. This is exactly what the child told her.

8 "First, he put the gooey something in my mouth.
9 Then he wiggled my body back and forth and my head. Becky
10 felt some salty water in her mouth and it dripped out onto
11 her hand and her jacket. She wiped her hands on her jeans."

12 That's just a little part of that three-page
13 document where she refers to it as round and gooey. Said he
14 told her to move her two legs. It's a pretty detailed
15 account. She takes this account from this child and the very
16 next day Becky is moved to another classroom. That's kind of
17 a big deal. I mean, a child gets moved from this classroom
18 to that classroom because a teacher has done something really
19 offensive and inappropriate with the child. I don't know, if
20 I'm a well-meaning teacher, I would think: Oh, my God. I
21 don't ever want to put a child in that position. I'm so
22 sorry she felt like that, and I would never ever want that to
23 happen. But he doesn't. He just waits. He waits for Lyn
24 Vijayendran to go on maternity leave. As soon as she does,
25 he does it again.

26 So once he does it again, Luisana does what a
27 responsible, loving, and caring mother would do, she goes to
28 the principal and says, What is going on here? And she calls

1 the authorities. They were the right people to call.
2 Luisana did nothing wrong. She did everything could have
3 asked her as a responsible parent.

4 The children are interviewed by the San Jose Police
5 Department, and these are the words that they know to use.
6 This is their vocabulary:

7 Round and gooey. He tells me to move my tongue
8 around. I felt like I was going to choke. Bigger than a
9 finger, smaller than a banana. Kind of hard, kind of soft.
10 No taste or smell. After one minute, gooey, salty water came
11 out. Several of the girls describe hearing metal clicking:
12 a belt, keys, zipper.

13 Those are the words that they know that they can
14 use. That's their vocabulary. Imagine for a moment trying
15 to describe an item that you may never have even seen, that
16 you have no language to describe. Even if you could describe
17 it, you wouldn't as a seven-year-old girl have any idea that
18 that body part is used in a mouth for sexual pleasure. You
19 just wouldn't know that. Children would never know that.

20 They use the words they know because there is the
21 word they don't know, "oral copulation." They don't know
22 that word. He touched me with his penis. They don't know
23 that word. They have the vocabulary that they have and they
24 are telling you with everything in them what happened to
25 them.

26 They not only tell you, they show you. And I
27 want -- I'm going to play these again because I think it's
28 super important to think about how these interviews

1 transpired. These are the children's words, not the
2 officers' words, their descriptions, their language.

3 Deputy, could I get you to --

4 (Whereupon, a tape was played, not reported.)

5 MS. FILO: Your Honor, for the record, those were
6 two clips of Isabell, one of Becky, and one of Arleth.

7 Ladies and gentlemen, that is a photo that Arleth
8 drew that day. That's what she saw when she peeked under
9 that blindfold. Ask yourselves this: Does a nine-year-old
10 know how to draw that? Does a nine-year-old have any idea
11 what that is?

12 Forensic search was done of the defendant's
13 computer and only one item was found of any evidentiary value
14 in this case. This was it.

15 (Whereupon, a tape was played, not reported.)

16 MS. FILO: It's easy to miss, but it's there.

17 (Whereupon, a tape was played, not reported.)

18 MS. FILO: Right here, what's he doing? There is
19 little Isabell wearing the exact same scarf that she
20 described in a classroom while Mr. Chandler is trying to get
21 rid of the other kids and he's got a camera set up for it.
22 He turns it on as the child walks right into the line of
23 sight, she turns away to sit down, and it is not until other
24 children come into that classroom that that camera goes off.
25 All of which corroborates everything that Isabell has told
26 us.

27 All right. So I said we would talk a little bit
28 about what the kids themselves have said. Isabell did not

1 want to go to school. This was a decided change in her
2 behavior. She had always been eager to go to school, and
3 what her mother saw when she looked down at her little girl
4 was that Isabell was scared. She said, "Mama, I have to tell
5 you something." She says to the police department that he
6 uses his hand on the back of her head to bob her head
7 forward. What seven-year-old knows that? What is the
8 explanation for that? Taste the candy. Taste the candy. I
9 mean, this is the universal language of oral copulation. She
10 says, "Round, kind of hard, hurts my mouth, and he tells me
11 to move my tongue around. Sometimes he gives me candy and
12 has me guess." But he never once has her guess what the big
13 round object is. Never.

14 Becky in her tape said, "I heard the keys." She
15 describes it both to the police and to the principal as round
16 and gooey. She says, "I could feel it all the way in my
17 mouth. After one minute, the salty water came out." She too
18 says, "He used to give me candy, but not anymore. Now it's
19 just the C thing." Tells her you could bite the chocolate,
20 but don't bite the gooey thing. She said she could feel his
21 hands at the end of the gooey thing holding it as he's
22 pushing it in and out of her mouth.

23 Laurie describes a glue stick to the police. Glue,
24 round, smooth, and little bit bumpy. But do you all remember
25 Dr. Lynn who came in and testified? An amazing woman; right?
26 And she says she spent three and a half hours with Laurie.
27 Had to get on the floor with her, play in a garden with her,
28 make her feel comfortable, and really get passed this

1 absolute wall that she had put up where she wouldn't
2 disclose. To Dr. Lynn, Laurie talks about the thing in her
3 mouth as strange, kind of wet, sticky, somewhat hard.

4 Dr. Lynn described a child who was shaking, crying,
5 and terrified by what had happened to her. What she told us
6 is that little Laurie will never again repeat what happened
7 to her. She's just not going to say it, not going to do it.
8 She talked about how Laurie discussed with her that Laurie
9 was being called names on the playground. She asked Dr.
10 Lynn, "Am I a slut?" A seven-year-old little girl asking a
11 child psychiatrist, "Am I a slut?" Most horrifying, this
12 little girl thinks this is her problem; right? She thinks
13 she was chosen because she's a good student and she does what
14 teachers ask her to do.

15 And last, Wendy talked about being grossed out. It
16 was round and oval. Felt like skin. It was too long to
17 close her mouth all the way around. She never ever played
18 this game in front of the whole class. "I bit down and he
19 said don't bite, but I thought to myself: How did he know
20 that I bit down?"

21 Then Arleth. He told her to lick it. It felt
22 nasty. It felt like skin. She tried to peek and saw skin
23 with hair around it. Her pants were down. The drink came
24 out of the thing while the thing was still in her mouth. It
25 just tasted bad. Again, poor Arleth thought she would go to
26 jail for telling someone what had happened to her.

27 Ladies and gentlemen, you have heard all of the
28 evidence in this case. I know you listened to each and every

1 witness that has come in to testify. There is really nothing
2 more that I could tell you at this point, but this: Craig
3 Chandler selected his victims very carefully. He chose
4 quiet, meek girls, almost all of whom have parents who speak
5 a language other than English. At least one child who had
6 some special education needs. This is a selection process.
7 This is a methodical, sociopathic deviant who chose children
8 in the most vulnerable condition to inflict this horrific
9 crime on.

10 You are not only the judges of the facts, you are
11 the conscience of our community. You are the people who get
12 to say, We condemn you. We as a society will not tolerate
13 you. We do not accept you. We condemn you. And that is
14 what you do with a guilty verdict in this case, and I ask you
15 to return that verdict. Thank you.

16 THE COURT: Thank you, Ms. Filo.

17 Ladies and gentlemen of the jury, we're going to
18 take a short recess before we begin Mr. Madden's closing
19 remarks. I'm going to ask all members of the jury to report
20 to the jury assembly room.

21 Folks in the audience, I would ask you to please
22 remain seated until the jury leaves the courtroom. We will
23 call you back just before 10:15, and we'll hear Mr. Madden's
24 closing remarks.

25 We'll be in recess for about 15 minutes.

26 (Whereupon, a brief recess was taken.)

27 THE COURT: Record will reflect all members of the
28 jury are present, both counsel are present, Mr. Chandler is

1 present.

2 Mr. Madden, you ready to proceed?

3 MR. MADDEN: I am, Your Honor.

4 THE COURT: Okay.

5 MR. MADDEN: If my voice will cooperate.

6 I first want to talk with you about a subject that
7 we covered often in the jury selection process, and the
8 subject is keeping an open mind. This case in particular,
9 all cases that involve allegations of child molestation, are
10 the most difficult cases for anyone to keep an open mind.

11 The reason is obvious. We want to protect our
12 children, ours and others. There is a tendency to do that.
13 It's the human condition. It's good. But not withstanding
14 that human need, that human feeling to protect, this is a
15 courtroom, and here we're not sending anybody any message
16 about the social conscience of the community. You are here
17 simply and plainly and only to decide whether or not the
18 People, the District Attorney, the prosecutor, has proved
19 this case beyond a reasonable doubt. That is it.

20 In the 18th Century, English essayists wrote
21 something about the consequences of not keeping an open mind.
22 I read this 20, 25 years ago. And it's something that I try
23 to make a part of my life, and I think it's a good thing for
24 all of us to do. His name was Herbert Spencer, and he said:

25 "There is a principle which is a bar against all
26 information, which is proof against all arguments, and which
27 cannot fail to keep a man in everlasting ignorance. That
28 principle is contempt prior to investigation."

1 And that's what happens in cases of this nature.
2 Good-hearted, well-intention people, whether it be parents or
3 police, panic. There is a rush to judgment and we had that
4 in this case. Two extreme cases of it: One, Isabell's
5 mother, Luisana; and the other, Arleth's mother, Maria Leon.
6 We'll get to that in due course.

7 You had the instructions. You were read the
8 instructions yesterday, but I'm going to the next instruction
9 that I think is critical in this case. That is this, it's
10 the circumstantial evidence instruction. I put it on the
11 easel. You could look it up in your jury instructions, or
12 you could just listen. It doesn't matter.

13 Before you may rely on circumstantial evidence to
14 conclude that a fact necessary to find the defendant guilty
15 has been proved, you must be convinced that the People have
16 proved such -- each fact essential to that conclusion beyond
17 a reasonable doubt. Also, before you may rely on
18 circumstantial evidence to find the defendant guilty, you
19 must be convinced that the only reasonable conclusion
20 supported by the circumstantial evidence is that the
21 defendant is guilty.

22 If you could draw two or more reasonable
23 conclusions from the circumstantial evidence, and one of
24 those reasonable conclusions points to innocence and the
25 other to guilt, you must accept the one that points to
26 innocence. However, when considering circumstantial
27 evidence, you must accept only reasonable conclusions and
28 reject any that are unreasonable.

1 I would like to now turn my attention to CALCRIM
2 instruction 220, which involves the presumption of innocence
3 and a concept of beyond a reasonable doubt.

4 The defendant in a criminal case is presumed to be
5 innocent. This presumption requires that the People prove
6 each element of a crime and special allegation beyond a
7 reasonable doubt. Whenever I tell you the People must prove
8 something, I mean they must prove it beyond a reasonable
9 doubt, unless I specifically tell you otherwise. Proof
10 beyond a reasonable doubt is proof that leaves you with an
11 abiding conviction that the charge is true. The evidence
12 need not eliminate all possible doubt, because everything in
13 life is open to some possible or imaginary doubt.

14 In deciding whether the People have proved their
15 case beyond a reasonable doubt, you must impartially compare
16 and consider all of the evidence that was received throughout
17 the entire trial. Unless the defendant -- excuse me. Unless
18 the evidence proves the defendant guilty beyond a reasonable
19 doubt, he is entitled to an acquittal, and you must find him
20 not guilty.

21 So I want to talk about three words within that
22 instruction. The words are "an abiding conviction." They
23 are simple enough, but these are powerful words. I would
24 like you all to think about some of the most important
25 decisions you have ever made. Your list will not necessarily
26 match mine, but I'll refer to my own personal experiences.

27 Where was I going to go to college? What my major
28 was going to be? What my occupation was going to be? Who

1 was I going to marry? Where did I want to buy a house?
2 You've all had, if not identical, similar experiences, and
3 each of those experiences involved for you and for me
4 considerable thought and deliberation. We did not take those
5 decisions lightly, but we made decisions.

6 I'm suggesting to you, ladies and gentlemen, that
7 the decision that you are going to try to make in this case
8 is more important than any of those that I just described.
9 And the reason for that is this: In all of the situations I
10 described, I had the ability to admit that I made a mistake,
11 that I was wrong. I went to the wrong college, I chose the
12 wrong major, I picked the wrong occupation, I bought the
13 wrong house, God forbid I married the wrong woman. I
14 volunteer that isn't correct. I married the right woman. In
15 September, we'll be married for 40 years.

16 There are no do overs in a jury trial. That's why
17 they use the words "an abiding conviction." This has to stay
18 with you. You know that you can't -- you have to have a
19 feeling where you are totally comfortable and you know that
20 you will never be second-guessing yourself. That's what an
21 abiding conviction means, one that will stay with you. All
22 right.

23 I want to talk about one more instruction and then
24 we'll talk about some other things. This needs no
25 explanation or comment. I'm just going to read it to you:

26 A defendant has an absolute constitutional right
27 not to testify. He or she may rely on the state of the
28 evidence and argue that the People have failed to prove the

1 charges beyond a reasonable doubt. Do not consider for any
2 reason at all the fact that the defendant did not testify.
3 Do not discuss this fact -- that fact during your
4 deliberations or let it influence your decision in any way.

5 So let's talk about the evidence. The first person
6 I want to talk about is Dr. William O'Donohue, an incredibly
7 credentialed expert. Professor of psychology; runs -- has a
8 grant to run a clinic for victims of sexual abuse; has
9 personally treated over 2,000 victims of child sexual abuse;
10 he is familiar with all of the literature on child sexual
11 abuse; is familiar with all of the literature on the forensic
12 interviewing of children. In fact, he wrote a considerable
13 body of that literature.

14 Dr. O'Donohue knows what he's talking about. He
15 was asked to review this case, and he was provided with audio
16 and videotapes of all of the recorded interviews of the
17 children, together with transcripts of those interviews. The
18 same evidence that you are going to have. Additionally, he
19 was provided with a transcript of the preliminary
20 examination, but of course the trial had not occurred, so he
21 did not have that information at his disposal when he wrote
22 his report.

23 So he identified eight categories that caused him
24 concern in this case about this evidence, all of which, I
25 might add, the prosecution has ignored. He first talked
26 about inconsistencies in children's allegations. What he
27 told you is that inconsistencies are red flags, they are not
28 to be ignored, especially when they involve core details:

1 who, what, when, how it felt, those kinds of things.

2 He made a table, an inconsistencies table, and we
3 reviewed most of that during his testimony. I'm not going to
4 read that table for you now, but you heard it in evidence.
5 Should you need to hear any of it again, you could ask for a
6 re-read of that testimony.

7 Dr. O'Donohue was able to tell you that all of the
8 children gave inconsistent statements within each interview
9 and across all interviews. And a little bit later here, I'm
10 going to talk about their trial testimony, and they gave yet
11 other inconsistent statements at this trial. These are not
12 to be ignored.

13 The next area that troubled him were the details
14 that didn't make sense. Let's face it, this case is about
15 oral copulation. The object is about oral copulation. The
16 thing is about oral copulation. Plain and simple, the People
17 are alleging that Craig Chandler put his penis in the mouth
18 of five girls. Until this trial, it was four. But as of
19 this trial, there is a fifth, and that's Laurie. We'll talk
20 about her in a moment.

21 That allegation surfaces for the first time in this
22 trial after she spent, not three and a half hours, but
23 basically one hard hour talking with Dr. Lynn, who basically
24 was not doing a forensic interview, but was doing an
25 evaluation for a personal injury attorney who is pursuing a
26 civil lawsuit.

27 She had no information whatsoever about Laurie's
28 previous statements in terms of what she said. And in all

1 previous statements, she was very clear about this, Mr.
2 Chandler never put anything in her mouth.

3 The details that don't make sense. The instruction
4 to someone in whose mouth rests your penis, the instruction:
5 Chew it or bite it. Ladies and gentlemen, that makes no
6 sense. That a penis felt like a gummy bear. That makes no
7 sense. That it felt like a glue stick. That makes no sense.
8 That it tasted like strawberry. That makes no sense. That
9 it tasted like smoke. That makes no sense.

10 MS. FILO: Objection, Your Honor. That misstates
11 the evidence.

12 THE COURT: Um, ladies and gentlemen, if either
13 attorneys misstate the evidence and it conflicts with your
14 recollection, follow your recollection. And what the
15 attorneys say is not evidence.

16 MR. MADDEN: It tasted like juice makes no sense.
17 It tasted like pee makes no sense. In fact, Dr. O'Donohue
18 said that in 2,000 cases he's never heard that from a child
19 who was a victim of sexual abuse.

20 Impoverished narratives. He gave an example:
21 Something was in my mouth. Something came out of it. If
22 this is an impoverished narrative, you would expect someone
23 who truly had been a victim of sexual abuse to be able to
24 give a much broader description. In the child's words, no
25 one would expect a child to know the word "oral copulation"
26 or anything else adult-like, but she could use her own words
27 to describe movement and motions and speed and friction. Her
28 own words. None of these children did that. None.

1 There is no detail unfolding. There was one
2 exception. When I asked the doctor, "Did you find that all
3 of the children gave impoverished narratives throughout their
4 interviews and their testimony?" He said all but one, and
5 that one was Arleth. We'll get to Arleth in a moment, but
6 Arleth is the child that you all remember, who does not
7 remember the teacher she had this year. I'm not faulting
8 Arleth. I'm not making fun of Arleth. Arleth has limited
9 capacity. It's not her fault. She, like all of the girls in
10 this case, is a sweet, innocent child.

11 When it comes to credibility, I want you to
12 understand this. I want you to understand my position with
13 total clarity. It is not my position that any of these
14 children lied. I do not believe any of these children lied.
15 But there were things that happened to those children that
16 shouldn't have happened that resulted in the negative -- it
17 resulted in bias, bias that has affected their ability to be
18 relied on as accurate historians of what occurred. They have
19 been influenced by other people.

20 Lack of good isolation. What does that mean?
21 People who molest children don't do it in public. They take
22 extraordinary steps not to get caught. The things that they
23 do are really common sense. Some are actual, actual
24 isolations of children. Others are verbal. Example of
25 verbal is telling a child not to tell anyone; threatening to
26 do something to the child if she does tell anyone; bribing
27 the child; scaring the child; giving gifts to the child.
28 There is all kinds of things that one could do verbally. It

1 is significant, according to Dr. O'Donohue, that the children
2 have all denied that Mr. Chandler told any of them not to
3 tell anyone.

4 Another item that sounds small, but is not small,
5 is the fact that the universal evidence in this case, whether
6 it came from the five complaining witnesses or from any of
7 the students that were called essentially randomly by me to
8 establish general principles of the feel and the touch game
9 and the objects that were used, universally across all
10 testimony, the evidence is Mr. Chandler was as casual as
11 casual could be about blindfolds. In fact, he gave the
12 blindfolds himself, or had the kids pick up the blindfolds.
13 And each of the children, all of them, put on their own
14 blindfolds.

15 And does that make sense? No. What would make
16 sense if you were molesting a child would be to make sure
17 that you are in charge of the blindfold; that you could
18 adjust it so no one could peek. These are seven- and
19 eight-year-old kids, why would you ever possibly assume
20 everyone's blindfold fit and that you could trust them to do
21 this? That is a very, very, very significant piece of
22 circumstantial evidence, and it's common sense.

23 Additionally, Mr. Chandler is the one who told the
24 kids to take their blindfolds off. Didn't take it off
25 himself. Several of these children are claiming they saw Mr.
26 Chandler pulling up his pants or his zipper or all of these
27 kinds of things after they'd taken their blindfolds off.
28 Does that make any sense?

1 Poor interviewing techniques. He indicated and
2 described what good interviewing techniques were and what
3 poor interviewing techniques were. Good interviewing
4 techniques involved not asking leading or closed-end
5 questions. And I suggest, ladies and gentlemen, that as you
6 listen to the CIC interviews, read along with the tapes,
7 throughout these interviews there is an extraordinary amount
8 of leading and closed-end questions. In fact, Det.
9 Pierce's -- I think it's a two-page document with questions
10 on there. Those are all closed-end questions, all of them.
11 They aren't asking -- there is no effort for a free-flowing
12 narrative. Let's get right to it.

13 Repetitive questions. Repetitive questions occur
14 when a child doesn't give you an answer that you wanted to
15 get, so you go back to it and you go back to it and you go
16 back to it. Those are seen throughout the interviews.

17 Disconfirming questions. What's important here
18 when you have poor interviewing techniques is that -- Dr.
19 O'Donohue said that the effect of a poor interviewing
20 techniques is you create unresolved questions and multiple
21 interpretations.

22 Outside contamination. This was the sixth of his
23 eight concerns. Outside contamination is when adults or
24 others have talked with children and influenced a child's
25 statement. And, of course, out of all of the children
26 involved in this case, no one was more a victim of outside
27 contamination than Arleth. Her mother for three days, and
28 the mother's own word "interrogated" her child. Not only was

1 the mother interrogating the child, the media circus in this
2 case began on or about January the 9th. Arleth was not
3 interviewed until the 17th of January, eight days later.

4 During that time, she'd seen, in her own words, Mr.
5 Chandler's face on TV. When she's not seeing it -- several
6 times. When she's not seeing it on TV, a neighbor is asking
7 if the person that the neighbor saw on TV was her teacher.
8 Arleth for three days denies that anything happened. "No,
9 nothing happened. Mr. Chandler is a good man." Out of the
10 mouths of babes. But her mother kept pushing, and that
11 wasn't enough to do the trick. Her cousin Noemi, who lived
12 with the family, also questioned her twice. And what you
13 wind up at the end with is a child yielding to the pressure
14 of her mother and to her cousin. That cannot be denied.

15 Stake. When Dr. O'Donohue wrote his report, no
16 civil suits had been filed in this case. And he indicated in
17 his report it was his opinion that stake was not an element
18 that concerned him. When I explained to him that three civil
19 lawsuits have been filed, one on behalf of Wendy, one on
20 behalf of Arleth, and the other -- uh-oh, I done it --
21 Laurie, that changes things. And nowhere is it more evident
22 than Laurie. We'll talk about Dr. Lynn in a moment.

23 Finally, spontaneous outcries: Uncle Bobby put his
24 weenie in my mouth. Spontaneous outcry by a child. The
25 strongest evidence. The spontaneity of that is significant
26 to a therapist. On the other hand, when outcries are really
27 not outcries, but come as a result of questioning, whether
28 it's by family or by police, that's not the same thing. In

1 this case, Dr. O'Donohue told you that none of the children
2 gave a spontaneous outcry. Not one.

3 Let's turn our attention to the children. I'm
4 going to talk about Becky first. Here's the reason. Becky
5 didn't say much in this trial, and because of that, you not
6 only have a CIC, Children's Interview Center, video and
7 transcript in evidence, you also have a -- you heard her
8 testimony at the preliminary examination, and that was
9 legally proper, so I will let you compare those two in the
10 jury room. And you will find inconsistencies within and
11 between those statements.

12 On the other hand, both Becky and her mother said
13 two things that I thought were very impressive in their
14 statement in this trial. Ms. Filo asked Becky, "Did
15 something bad happen there?" And she said, "I don't know."
16 I think in a lot of ways that is truly speaking for all of
17 the children in this case. They don't know. That, in and of
18 itself, is troublesome, because if Mr. Chandler did the acts,
19 the unspeakable acts, the sociopathic, maniacal, twisted,
20 bent sexual acts that she's suggesting have been proved, what
21 would have been the response of those children? I will talk
22 about that at the end of my comments.

23 The mother said this: "My daughter has been
24 transferred. She's so small. I don't want her to deal with
25 this because the matter is not black and white." That was a
26 reserved, measured statement. That actually is someone who
27 appears to be making every effort to keep an open mind. The
28 matter is not black and white.

1 Couple of more things about Becky that I do want to
2 comment on. Much has been made to-do about this exhibit, Lyn
3 Vijayendran's handwritten notes. Very little has been
4 discussed about a later report. Ms. Vijayendran in this
5 trial in her own words cleared up three very important
6 points. She indicated that the expression "open your legs"
7 was inconsistent with another statement that Becky told her,
8 which was "move your legs." And she acknowledged, and we
9 would all agree, there is a world of difference between move
10 your legs and open your legs.

11 Equally important, the gooey something in Becky's
12 mouth was a bottle. That is her testimony: "The vessel
13 carrying the liquid was a gooey bottle." That is a
14 clarification Ms. Vijayendran had of the thing that went --
15 and I might add, and you listen to this tape, not into her
16 mouth, but to her mouth. There is a big difference. Listen
17 to that tape. You will hear it.

18 Equally important, Ms. Vijayendran looked at the
19 document. She's a grown woman, a married woman. She's not
20 an expert in DNA, but she can be asked as a lay person
21 questions all lay persons know about, and the question was:
22 Was the semen -- was the stain that you saw on that jacket a
23 semen stain? It was not a semen stain.

24 I would like to talk about Luisana, her trial
25 testimony and her trial testimony of her daughter, Isabell.
26 Luisana stated that Becky [sic] said she gagged when the
27 object was in her mouth. However, she was impeached when I
28 quoted her preliminary examination testimony, in which Mr.

1 Schumb asked Luisana, "Did you say to Det. Pierce that you
2 asked Isabell if she kind of choked or something?" And she
3 said, "No." "Did you ever tell that statement to Det.
4 Pierce?" Answer: "I did."

5 Luisana admitted her daughter did not know what was
6 going on. Luisana acknowledged that Isabell has never told
7 her mother that the object was curved. Luisana acknowledged
8 that Isabell told her that Mr. Chandler said, Go ahead, move
9 your tongue around. Is that a sexual directive? Or, is that
10 a directive telling someone who has a food item in their
11 mouth to move your tongue around so could you taste it and
12 tell me what you taste, a person who is blindfolded.

13 We all know the language of oral copulation. It's
14 not present here. Isabell told her mother that there was
15 never anything in her mouth, but the same thing. The same
16 thing. That position is impeached by Isabell's preliminary
17 examination testimony and her trial testimony, that she
18 played the game in front of the whole class and there were
19 clearly other things in her mouth, including candy and
20 crackers.

21 Luisana also admitted that she told her daughter
22 what Mr. Chandler did was bad, and she told her that before
23 Isabell first testified at the preliminary examination. The
24 mother admitted asking her child, "Did you feel any liquid?"
25 The answer, "No." "Did you feel anything?" "No." Mom
26 admitted Isabell did not mention anything about Mr. Chandler
27 making any noises while he was doing this. The only word
28 used to describe the object was "round." That was it.

1 Isabell. She testified on July 15th. Isabell said
2 she can't remember how many times he put the object, she
3 couldn't identify it in her mouth, but it was more than one
4 time. She said he put something in her mouth; it was, like,
5 curvy. That's the first time that word appears in this case,
6 at trial. An expansion -- an expansion of a memory a couple
7 of years old. No one's memory gets better with time. Not
8 yours, not mine, not a child's. That isn't how the mind
9 works. What is behind this?

10 She said he pushed her head always the same.
11 Sometimes he used candy. There is another new addition at
12 trial, another expansion of her allegations. At trial, she
13 stated after he took the object out of her mouth when they
14 were alone, she heard keys, and she said that before, but she
15 added that she heard him zip up his pants. That comes out of
16 nowhere. This is a radical new allegation.

17 In contrast, during your deliberations, I would ask
18 that you go back to the CIC interview on the subject of
19 noises. Det. Pierce gave Isabell a number of opportunities
20 to describe if Chandler made any noises or talk. She
21 repeatedly told him, He never made any noises or said
22 anything other than to move my tongue.

23 Again, she continued to receive continuing
24 opportunities to describe noises, and she always said no
25 noises were made. This is to Det. Pierce. She admitted she
26 did not cry or get angry or act upset in any way when Mr.
27 Chandler put the object in her mouth. And, in fact, ladies
28 and gentlemen, that is the testimony of each and every one of

1 these children. And at the end of my remarks, I'm going to
2 address that subject.

3 Isabell admitted Chandler never told her not to
4 tell anyone, never told her to wait a minute, or hold it when
5 she was taking her blindfold off. Never said she should not
6 tell her friends, her parents, or anything like that.

7 She admitted she tasted candy and crackers. She
8 admitted no liquid ever came out of anything. She admitted
9 you had to sit on the wall when you got in trouble. She
10 admitted and acknowledged that she told Ms. Peery that this
11 only happened one time.

12 Let's turn our attention to Laurie. At the
13 preliminary examination, she testified that she was only
14 alone with Mr. Chandler one time. At the school interview,
15 that is the first interview at O.B. Whaley, she told the
16 officer Mr. Chandler never put anything in her mouth. At the
17 preliminary examination in May of last year, she testified
18 under oath that Chandler did not tell her not to tell anyone.
19 At the CIC interview, she stated she did not hear anything
20 when Mr. Chandler was putting objects on her. At the
21 preliminary examination, she testified she heard cabinets
22 opening. At the CIC interview, the police asked her if she
23 heard anything opening, or any zippers, belt, or anything,
24 and she said no.

25 This is perfect. This is about as close and bad an
26 example of leading closed-end questions as you could have.
27 You're basically giving the child a multiple choice, pick
28 your answer, any or all of them, and yet she says no.

1 At the CIC interview, she says, We had a book about
2 a story about Helen Keller. She can't see and had to feel
3 stuff to know what it is. He said we're going to learn the
4 same things. On the other hand, at the preliminary
5 examination in May of last year, she testified they were not
6 reading the Helen Keller book. At the trial before you, she
7 stated, I don't remember to -- the question by Ms. Filo, "Did
8 he put anything in your mouth?" She also said at this trial
9 she couldn't remember him putting anything in her mouth, but
10 she said it's kind of fuzzy.

11 It's time to get back to Dr. Lynn. Dr. Lynn is not
12 an amazing person. Dr. Lynn has no interest in seeing police
13 reports or transcripts or audiotapes relative to the child's
14 prior positions. No interest in that. She has the child and
15 the child's parents to her office, yes, for three and a half
16 hours, but her time with the child was one hour. I believe
17 she said, hard time one hour with the child. I don't want to
18 quibble about that. That is not important. I'm much more
19 concerned about the fact that she seems to have no interest
20 in understanding what the facts are.

21 Lynn (Redacted) -- Dr. Lynn for the first time in
22 the case presents evidence that the child said Chandler put
23 things in her mouth and moved them around. How could that
24 be? She did not -- Dr. Lynn did not receive or consider any
25 police reports, any audio or video CD's of Laurie's
26 statements to the police at the school and at the CIC
27 interview. Did not review a transcript of Laurie's
28 preliminary examination.

1 I took her through the quoted portion of her report
2 and she waffled and resisted. For example, her report does
3 not mention Mr. Chandler touching Laurie's feet with any
4 objects, but that's what Laurie has always said. In fact,
5 what Laurie always said, that's the only part of this game
6 she ever did, the feel part of the game, with objects on her
7 feet.

8 Additionally, the report stated that Laurie
9 mentioned her hands touching things. But in all previous
10 police and courtroom statements and testimony, she denied
11 that her hands touched anything on Mr. Chandler and also
12 denied that her hands touched any objects, period.

13 Her report does mention that things were, quote,
14 moved around in her mouth, closed quote. That's why Dr.
15 (Redacted) concluded that Mr. Chandler had put his penis in
16 her mouth. Before Laurie came to court, she spent obviously
17 time with Dr. (Redacted).

18 MS. FILO: Your Honor, I will move to strike the
19 name, Your Honor.

20 MR. MADDEN: I'm sorry. I apologize. Dr. Lynn.

21 THE COURT: That portion is stricken.

22 MR. MADDEN: Please forgive me.

23 When Laurie comes to court, she still doesn't say
24 that he put anything in her mouth. Only Dr. (Redacted)
25 concludes that.

26 MS. FILO: Again, Your Honor.

27 MR. MADDEN: I'm sorry. Dr. Lynn. Please forgive
28 me.

1 THE COURT: Name is stricken.

2 MR. MADDEN: I think I will just move on. I won't
3 make that mistake again.

4 Arleth and her mother. I apologize. Let's talk
5 about Noemi Gonzalez, the cousin. Ms. Gonzalez acknowledged
6 that the two families were living together during the 2011 --
7 2010/2011 school year, the year that Arleth was in the third
8 grade. After a week or so, she said, I knew something
9 happened. Of course, she had been watching the news. Mr.
10 Chandler's face was all over the news. He had been arrested.
11 And I told Arleth, You have to tell me. In addition to the
12 media barrage, Arleth came home one day with the letter from
13 the school talking about Mr. Chandler and that there was an
14 investigation going on that he had been arrested.

15 Her testimony is important in terms of what she
16 says Arleth told her, because she is clearly using words and
17 attributing these words to Arleth that Arleth doesn't know.
18 She's helping Arleth. Noemi acknowledged that during lunch,
19 Arleth went into Chandler's class and he would cover her
20 eyes, then stick something in her mouth and tell her to bite
21 it and he would be moaning. You think Arleth would use the
22 word "moaning"? No, no, no. He would tell her to keep doing
23 it. She also said that Arleth described that she was sitting
24 down and he would be behind her and hump her. You think
25 Arleth ever used the word "hump"? No. No way.

26 Noemi acknowledged she was fully aware of the TV
27 coverage of Chandler's arrest. And in cross-examination I
28 asked her, You had to help her? And she said yes. Noemi

1 said that Arleth said it was like something -- something
2 hard, like it wasn't hard, but he kept on telling her, Oh,
3 bite it. Is that a sexual directive by a man who is being
4 orally copulated, telling someone to bite their penis?

5 She admitted she had to help Arleth with the words.
6 Noemi admitted, She was telling me, but at the same time I
7 started asking her questions, too. At the end I asked her
8 questions. On cross-examination, she admitted that Arleth
9 did not use the word. Important is Noemi's admission that
10 she asked Arleth if Chandler ever told Arleth that she
11 couldn't say anything. And Arleth said, No. He never told
12 me that.

13 Let's move to Arleth. She described being with
14 Chandler alone five or six times. I submit to you that the
15 most she was with Chandler alone is on two occasions. The
16 other two occasions involved the exercises, and are basically
17 as bazaar as any testimony in this case. Starting with the
18 fact that during the exercises she was not, repeat, not
19 wearing a blindfold. She is describing -- I'm not exactly
20 sure what the People's position is on this, but being on her
21 hands and knees with Mr. Chandler behind her pushing her with
22 his head while holding her ankles or shoes. At the
23 preliminary examination, the object wasn't a head; it was a
24 red, squishy ball. And at trial, it was both. Two different
25 instances.

26 Arleth described this last time that something went
27 in her mouth when she was in a blue student's chair, which
28 was already in place next to Mr. Chandler's desk. She said,

1 "He put something in my mouth. It was on my mouth, inside my
2 mouth. It was candy." Was -- she said the shape was a
3 circle. She said the thing had no taste. Ms. Filo asked
4 Arleth about the object in her mouth about it moving. The
5 question was: "Did it move?" Arleth responded: "Just
6 stayed there. It didn't move at all." Is this an act of
7 oral copulation? No.

8 Ms. Filo went on to ask her another question. "Was
9 it hot? Was it cold?" "No. It was normal." When the
10 object was in her mouth, the only thing Mr. Chandler said was
11 to lick it. He didn't say anything else. Later on
12 cross-examination, Arleth admitted she was not upset and did
13 not cry during any of these times alone with Mr. Chandler.
14 Of course, that is consistent with her own testimony, that
15 she did not come to the conclusion that anything she did the
16 year with Chandler was wrong until Chandler was arrested and
17 the TV coverage and interrogation by her mother and cousin
18 began.

19 Again, show acknowledged no blindfolding on the
20 two, quote, exercises. She said she was on her hands and
21 knees, and he was holding my leg, like, all the way down on
22 my feet over my shoes. She was wearing shoes and socks. She
23 said, He said to stay there, and with his head he was pushing
24 me all the way back. Pushing her bottom with his head, she
25 said. She saw water dripping in back of her. You remember
26 that? She's on her hands and knees, and I asked her to show
27 me or tell me what her point of view was, and it appeared to
28 me there were only three choices:

1 One, she was looking over her left shoulder; two,
2 looking over her right shoulder; or three, looking down
3 between her legs. And, of course, she said looking down
4 between her legs. Right behind her legs was standing Mr.
5 Chandler, pants on and in place. And then she said she saw
6 water. Where was it? Behind Mr. Chandler. I believe that's
7 what Dr. O'Donohue would consider a fantastical detail.

8 Then after they did the affirmation exercises, she
9 did jumping jacks, all with no blindfolds. To the extent, if
10 any, that this was some sort of sexual molestation, Mr.
11 Chandler would do that without a blindfold? Does that make
12 sense?

13 The other time she was alone with Mr. Chandler --
14 excuse me. The other time she was alone with Mr. Chandler,
15 she had her eyes covered. Additionally, she later admitted
16 that she was in the classroom demonstration, and she admitted
17 that all of the times she was in class alone with Chandler,
18 all of the times she was alone with Chandler, were before the
19 classroom demonstration. She acknowledged she was practicing
20 with Chandler.

21 She said she was blindfolded another two or three
22 times. She was not able to peek, but she could look under a
23 little bit. She said she saw a circle, but did not see
24 anything else. She said she did not begin to think something
25 bad had happened until she saw the news.

26 Arleth was asked -- strike that. Arleth admitted
27 she played the game in front of the class one time. She
28 tasted something grape, strawberry, lollipop. She said

1 sometimes it tasted the same. Arleth was asked if -- when
2 the liquid came out of the thing in her mouth if she ever
3 told anyone it tasted like pee. She responded, "I don't
4 remember." I submit, ladies and gentlemen, that if you ever
5 tasted anything that you thought was pee in your mouth, you
6 would remember it the rest of your life. You would not
7 forget that.

8 Arleth acknowledged during cross-examination that
9 at the preliminary examination, she did say that the thing
10 was shaped like a cone-like ice cream. Arleth acknowledged
11 that she did not hear any other noises while the thing was in
12 her mouth. She acknowledged that -- at the preliminary
13 examination, she did say that what came out of the thing in
14 her mouth was kind of like water.

15 She also said that after Mr. Chandler -- after the
16 blindfold was taken off, Mr. Chandler never said anything to
17 her after she took off the blindfold, which gets to another
18 very important point. She's saying that she's -- Chandler
19 had his pants down and was pulling them up. Is he so casual
20 or so sociopathic that he doesn't really care about the
21 blindfold? Go ahead, take the blindfold off. I'm going to
22 rearranged here. That makes no sense. Again, there is no
23 evidence that Arleth was in any way in fear of or upset with
24 Chandler when these events occurred in the classroom.

25 At trial, she thought everything was normal. She
26 acknowledged that at no time during or after the time she was
27 taking off her blindfold that Chandler ever say, Wait a
28 minute, or, Don't take off your blindfold yet, or anything

1 like that. He never said anything like that. If you were
2 molesting a child and she was blindfolded during that period
3 of time and you were in her presence and she started to take
4 off the blindfold, would you ignore that? No, you wouldn't.

5 Arleth admitted that before she talked to her
6 cousin, Arleth told her mother that Mr. Chandler had never
7 touched her or done anything to her. At trial, Arleth said
8 Mr. Chandler told her to bite it three times. However, she
9 also acknowledged that on none of those three occasions did
10 Mr. Chandler ever say "ow" or "ouch" or "stop that," which,
11 of course, is exactly what a man would do if someone bit
12 their penis while they were orally copulating them.

13 I want to talk a little bit about Wendy. Wendy is
14 interesting, for this reason. With Wendy, it was not her and
15 Mr. Chandler. It was her and Melissa and Mr. Chandler. When
16 you look at the CIC interview and read the transcript, you'll
17 see the words flowing through, the pronouns flowing through
18 that transcript of "we" and "us" repeatedly. And, in fact,
19 Wendy said that she was always with Melissa, always with
20 Melissa when she was alone with Chandler doing the feeling
21 with their feet. She never did this game alone with her.
22 Does that alone cause you concern? Because it should. To
23 accept that, now Mr. Chandler is going for doubleheaders.

24 It's also interesting to note, that at trial Wendy
25 said that all of the times with Melissa and Mr. C were within
26 the first five minutes of recess. Recess is 20 minutes long.
27 So he's molested two children within five minutes and sending
28 them to recess?

1 She never said anything that what was in her mouth
2 filled up her mouth or that she choked or gagged. She also
3 said that all but one of the times when she was doing the
4 taste game Melissa was also with her. So what I'm curious
5 about is, why isn't Melissa a named complaining witness? Why
6 didn't Melissa testify at this trial, who could have been a
7 more obvious and clear percipient witness?

8 She admitted on cross-examination that the whole
9 class played the game. Admitted the whole class played the
10 games after the times she and Melissa were blindfolded.
11 Again, consistent with practicing for the whole class
12 demonstration. At trial, she said she was alone with Mr.
13 Chandler a little over ten times. All previous testimony,
14 one time.

15 Two different things went into her mouth. She
16 doesn't know what it was, but he said it was candy. One was
17 candy, the other kind of a C, and tasted a little bit -- and
18 tasted a little strawberry. So if the prosecutor's position
19 was that this thing was his penis, now we have a strawberry
20 tasting penis in her mouth, which is ridiculous.

21 He said it was candy, so I thought I was supposed
22 to eat it. She bit it. She makes no mention of Mr. Chandler
23 expressing any pain. She doesn't describe a banana, not a
24 banana. She doesn't describe anything tubular or
25 cylindrical. She doesn't use the word "hot dog" She doesn't
26 describe any heaviness or weight of the object in her mouth.
27 No liquid described whatsoever.

28 Always with Melissa, except one time. No sex

1 noises, no sex commands, no sex words. Admits during
2 cross-examination that there were other objects, and she
3 remembered glue sticks, erasers, and scissors. She admits
4 she saw the whole class play the game, and she saw the whole
5 class play the game after she saw the feel game and the taste
6 game she played with Melissa and Mr. C. Admits Mr. C showed
7 her and Melissa a blue cloth and a red cloth after touching
8 something on their feet.

9 All right. I actually ironically wanted to cover
10 the same witnesses that Ms. Filo wanted to cover, but
11 obviously for different reasons. Let's talk about the
12 iPhone. When we talk about the iPhone videotape, we have to
13 include more than the iPhone because we have a stipulation,
14 ladies and gentlemen. And the stipulation is that forensic
15 interview -- excuse me -- forensic testing was done on the
16 computers of Mr. Chandler and his iPhone. Forensic searches.
17 This isn't someone stumbling around on an iPhone. This is
18 using police software to search computers and phones.

19 What do you think they are looking for? You know
20 what they are looking for in a child molestation case. They
21 are looking for child pornography. The only item of
22 evidentiary value in the stipulation is this photograph.
23 What does this photograph really show? It's not a
24 photograph. This video, what did it really show? It shows
25 Mr. Chandler's classroom, it shows Isabell, it shows an open
26 door, it shows chairs on top of student desks. What time
27 would that suggest to you it is? After school? She has
28 homework of some sort she's working on. You only have a

1 partial view of the class.

2 What nefarious thing did Mr. Chandler do? As he
3 turned his back to the students, he put his hand down to his
4 crotch area. I don't want to intrude, gentlemen, is that an
5 uncommon thing for a male to do during the day? No. Was
6 there something sexual about that thing? No. There are
7 other boys or kids running around. There is nothing sexual
8 about it whatsoever. The only significance of it is Isabell
9 is in the photograph.

10 I think the People are asking you to speculate
11 wildly about what Mr. Chandler must have meant when he
12 touched himself. You're not to speculate. If that doesn't
13 make sense, if doesn't clearly have purpose of sexual intent,
14 don't make it into something that it's not.

15 Hilda Keller and Annie Doe. Mr. Chandler showed
16 incredibly poor judgment in what he said to Hilda Keller. It
17 was inappropriate. You all know that. It clearly had sexual
18 overtones to it. Ms. Keller is an adult woman, however, an
19 attractive adult woman. Obviously, not interested in Mr.
20 Chandler, but he had some interest in her. Clearly, he did.

21 On that evidence that he asked, he said he was in a
22 massage class and he'd like to photograph her feet and
23 massage her feet. You're going to conclude he had a foot
24 fetish? Do we have any psychiatric or psychological evidence
25 of this trial to that effect? No. Again, wild speculation.
26 What it does show clearly is circumstantial evidence of Mr.
27 Chandler's sexual orientation; that is, he likes adult woman.

28 Annie Doe. I'm sure that Ms. Doe's testimony was

1 as painful for you to hear as it was me. Mr. Chandler showed
2 incredibly poor judgment. Well, before we get to that, he
3 used it, he did, plain and simple. Not once, but twice. And
4 unsavory as that is, it is also very strong circumstantial
5 evidence of his sexual orientation, a nice looking adult
6 woman.

7 Ms. Catangay. There is no lock in the door between
8 these two rooms. If you were serially molesting children in
9 your class right next to that door, wouldn't you take some
10 steps to make sure that nobody was on the other side of the
11 door, or locked the door in some way? This is under the
12 description of good isolation that was discussed by Dr.
13 O'Donohue.

14 More importantly, let's talk about the school
15 room -- door to room 18. That does have a lock. It could
16 only be locked by a key on both sides. It's not like our
17 homes, where you just push a button. The reason for that is
18 safety purposes. Every teacher has a key to his or her own
19 room, but everybody's key is a master key to the inside of
20 someone else's room. In case there is some sort of school
21 invasion, you could duck into a room and lock the door.

22 And if you were molesting children, would you
23 not -- and it was in that classroom, would you not before you
24 started to walk across the courtroom, put your key in the
25 door and lock it? And when it was over, would you not return
26 and unlock it? I challenge you, ladies and gentlemen, to
27 find any evidence of any of these children describing that.
28 None. That is not good isolation. Child molesters do not

1 want to get caught. After having sex with the child, it's
2 the next item on the agenda, the most important thing.

3 Ms. Montgomery. I'm not exactly sure what this
4 shows. Not much. For example, the time frame that she's
5 talking about is sometime from August, that is the beginning
6 of school, to December. No idea what day or anything. She
7 also said she was not concerned. She also said she heard a
8 knocking and she went out and Mr. Chandler's students had, I
9 believe, balls with them, PE balls. They looked like they
10 were waiting for him. And there is zero evidence as to
11 whether he was alone or with someone in the classroom.
12 Wouldn't you have to have a few more details before you drew
13 some conclusion about that episode? Why was it even offered?
14 It proves nothing. Without that information, it's not
15 relevant.

16 Armando Lara. The People took some serious
17 liberties with their position on this. I'm not denying that
18 Officer Pierce told Mr. Chandler, Call your principal in the
19 morning. Don't go to school. But Mr. Chandler was not
20 placed on administrative leave until Dan Deguara did that
21 within ten minutes of Mr. Chandler's arrival that next
22 morning. Mr. Chandler obviously missed school on the 9th, a
23 significant part of it. He didn't leave the San Jose Police
24 Department until late at night. The police had his iPhone.
25 He went to school the next day, so what? Was that against
26 the directive of Det. Pierce? Yeah. Is that a crime? No.
27 Was it unwise? Was it bad judgment? I think it was. But
28 then to take the leap that he was there to destroy evidence

1 or clean or something is totally inconsistent with the facts,
2 which are these:

3 Walked to his classroom right by the office. The
4 normal way he would go to his class. Parked in the teachers'
5 parking lot. He was an early arriver. I don't want to
6 quibble, but I think Ms. Catangay said between 7 and 7:30.
7 So he went to school a half hour, 45 minutes earlier that
8 morning. So what? He has a white bag. I don't know, I used
9 the expression "Zanatto's" to talk about this bag. I don't
10 know if any of you are familiar with it. It's a market over
11 on Naglee, kind of a hangout Rose Garden place. Great
12 sandwiches in case you don't know about. He has a
13 eight-by-ten inch plastic bag, something consistent with
14 having your lunch inside it.

15 Within ten minutes, less than ten minutes, Mr.
16 Deguara and Mr. Lara are -- they are not knocking on his
17 door, but open up the door with the key, I believe was the
18 testimony. Mr. Chandler is at his desk. Papers, books,
19 those kinds of things out on top of his desk. He doesn't
20 have any cleaning supplies in his hands. Those are in
21 another location against the wall, that he took with him when
22 he left, after being asked if he could take any personal
23 items, after being told he was on administrative leave and he
24 had to leave the campus.

25 When I say the word "lysol," does everyone have a
26 picture of what that smells like? Or Clorox? Of course, you
27 do. Those are pungent, powerful cleaning smells. We
28 remember them since we were little kids. Is there any

1 testimony about smelling any of those products? This is
2 within ten minutes. What would the prosecutor have you
3 speculate as to what was going on in that ten minutes? This
4 feverish cleaning, this feverish destruction of evidence.
5 There is no evidence to support it. None.

6 The last point I want to make, it was mentioned by
7 the People, use your common sense. If you imagine an over
8 six-foot-tall, 230-pound man, thrusting his erect penis into
9 the mouth of seven- or eight-year-old, four or five of them,
10 however you measure the allegations, and they are blindfolded
11 and then ejaculates in their mouth, could you for one minute
12 possibly imagine an involuntary reactive movement of those
13 children?

14 I suggest that it will be something like this: Oh,
15 Mr. Chandler, what is that? What are you doing? Not one
16 child has described anything like that. Not one. It would
17 be visceral, it would be immediate. I don't care what your
18 IQ is, I don't care how clever you are, I don't care what
19 disabilities you have, it would be overwhelming and
20 involuntary and immediate. Not one, not one.

21 Ladies and gentlemen, Mr. Chandler did not molest
22 any of these children. The People have failed to keep their
23 burden of proving their case beyond a reasonable doubt. Do
24 not convict an innocent man. Thank you.

25 THE COURT: Thank you, Mr. Madden.

26 Ladies and gentlemen, we're going to take the noon
27 recess at this time. I will order all members of the jury to
28 report to the jury assembly room on the second floor at 1:30,

1 and at that time we'll continue with the closing remarks.

2 We'll be in recess.

3 (Whereupon, the Court took the noon recess.)

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

AFTERNOON PROCEEDINGS

THE COURT: Thank you, ladies and gentlemen. The record will reflect all members of the jury are present, both counsel are present, Mr. Chandler is present as well.

And as I understand it, Mr. Madden, you wanted to resume your closing remarks? You had a few comments you wanted to make?

MR. MADDEN: Thank you, Your Honor.

THE COURT: Okay.

MR. MADDEN: Ladies and gentlemen, I apologize. There was one subject I didn't cover this morning that I wanted to cover. It will take a couple of minutes. That's the subject of the DNA. The two stains on these two chairs contain semen, no other bodily fluid, and it's Mr. Chandler's semen. I disagree with Ms. Filo concerning Ms. Cardosa. Ms. Cardosa said that the one particular stain did not appear to be a transfer stain, but scientists would never make an absolute statement that it wasn't a transfer stain. She said it doesn't appear to be because there were droplets.

The most important part of her analysis, however, has less to do with the transfer stain than the fact there was no saliva found in either stain. What that means is very clear, and it is this, that semen was never in the mouth of any child. Otherwise, there would be saliva in that stain -- in those stains, and it's not there.

MS. FILO: Objection, Your Honor. That misstates the evidence. May we approach?

THE COURT: Yes.

1 (Whereupon, there was a discussion at the bench.)

2 MR. MADDEN: Let me restate that, ladies and
3 gentlemen. There is no mixture of other DNA in that stain.
4 There are no other epithelial cells saliva from --

5 MS. FILO: Objection, Your Honor.

6 THE COURT: The last comment is stricken.

7 Ms. Filo, do you wish to give rebuttal at this
8 time?

9 MS. FILO: Thank you.

10 So, rebuttal is really my opportunity to talk to
11 you about what it is the defense attorney has raised. It's
12 really my opportunity to respond to what he's tried to argue
13 to you. It's always hard for me to organize because now I'm
14 responding to them instead of using my own format.

15 But I want to start exactly where he started,
16 because I think it's the clearest way to talk about what 90
17 percent of the closing argument from the defense was all
18 about, and it's about their expert. I want you to remember
19 and start with the premise that this man was paid \$20,000 to
20 come and talk to you; 20K. That's an insane amount of money
21 to give an opinion that lasted, what, three hours?

22 He talked to you about core versus secondary facts.
23 Okay. By the time that guy was done testifying, I had no
24 idea what a core fact was and what a secondary fact was,
25 because he started by telling us that core facts were who,
26 what, where, how often, and what it felt like. But they were
27 all consistent about that; right?

28 What he says is that kids will remember traumatic

1 events, they won't have those kinds of inconsistencies.
2 Well, first of all, they don't know it's a traumatic event.
3 They are blindfolded. That's the whole problem. And for
4 \$20,000 he comes up with those kinds of inconsistencies.
5 Isabell said it was round, in another interview she said it
6 was round, and in a third statement she said it was curved.
7 I mean, I racked my brain to think of an item that is round,
8 but not curved.

9 Isabell said it tasted like strawberry. Really,
10 Doctor? Because I spent my whole lunch hour looking through
11 that transcript, my entire lunch hour looking just for the
12 word "strawberry." I couldn't find it. For \$20,000, you
13 can't even quote her interviews properly? There is a
14 transcript. It's in writing.

15 He identifies as an inconsistency. Laurie said,
16 Well, I told my mom in a first interview. Told my mom in a
17 second interview. Seven months later, she says, I don't
18 remember telling my mom. I don't remember if I told my mom.
19 So? Don't we just -- I mean, don't we assume that's just a
20 child who doesn't remember telling her mom? No, no, no. To
21 Dr. O'Donohue, that's now a primary inconsistency. I'm
22 sorry, I thought primary core facts were: who, what, where,
23 when, and how? That's what I thought the primary
24 inconsistencies were.

25 Arleth wasn't asked what she saw under the
26 blindfold. Really? Dr. O'Donohue, were you not provided
27 with the picture that she drew of what appears to be
28 testicles with hair surrounding it? Were you not given that

1 picture? No, Counsel. I don't think I have ever seen this
2 before. Huh.

3 Whether the item made Isabell choke. Again, this
4 is one of his primary core inconsistencies. Well, Doctor, if
5 I told you that Luisana has said that if she ever said that
6 to anyone, she was just mistaken. She has always meant to
7 say that, and that is what Isabell has always said, was that
8 the item made her choke. Yes, that would clear up that
9 inconsistency. Oh.

10 So, Mr. Madden suggests to you that Dr. Lynn just
11 doesn't really want to know the truth because she doesn't ask
12 for all of those other reports. She doesn't ask for police
13 reports, things like that. But, Dr. O'Donohue never met the
14 kids. How can you possibly talk about whether a child is
15 telling you the truth when you've never met them? He never
16 even asked to meet with them. Why? Well, that wasn't part
17 of my assignment. 99 percent of his work is for the defense
18 bar. He knows who pays his mortgage.

19 Never reviewed any of the drawings by Arleth.
20 Never. Never given information about the semen in the
21 classroom. I mean, you're talking about information that is
22 central to this case, and you're not given possibly the
23 single, most important piece of evidence in this case?

24 Dr. Lynn's job, what she told you is, I saw Laurie
25 in order to find out what happened to her. That's my only
26 role, is just to find out from this child what's happened.

27 Dr. O'Donohue's job is to criticize the
28 investigation on behalf of the defendant. It's not to get at

1 the truth. It's not to find out what happened. It's to
2 criticize the investigation, and he's being paid handsomely
3 to do it.

4 What Mr. Madden's closing argument really talked
5 about were inconsistencies. There is actually a jury
6 instruction, it will be in your packet. You will be able to
7 see it when you go back into the jury room.

8 Do not automatically reject testimony just because
9 of inconsistencies or conflicts. Consider whether the
10 differences are important or not. People sometimes honestly
11 forget things or make mistakes about what they remember. Two
12 people may witness the same event, yet hear it or see it
13 differently.

14 I will suggest this to you, wouldn't it be more
15 concerning to you if the children came in robotically and
16 said the same thing over and over and over and weren't able
17 at any level to expand, give any greater detail? Wouldn't it
18 be more coached if they were said: Here, baby, say this.
19 Make sure you get these words in. In always say the same
20 thing. That's what a coached witness sounds like. These are
21 children.

22 You are responsible for deciding whether or not
23 there are inconsistencies. It is incredibly difficult for me
24 to sit in my chair and maintain my composure when the defense
25 is talking to you about inconsistencies in this trial that
26 never occurred. No child at any time in this trial has ever
27 said that anything tasted like smoke. I don't know where
28 that came from.

1 Isabell has never, never in an interview with Det.
2 Pierce said that the item tasted like strawberry. She hasn't
3 said that. These things are inaccuracies. He's asking you
4 to read things into this trial and read things into the
5 record that didn't happen. You are the sole judges of what
6 is or isn't an inconsistency and whether or not it ever even
7 happened in this record.

8 What about those consistencies? None of what he's
9 talked about actually suggest that these children weren't
10 assaulted. Nothing. Not a single inconsistency that the
11 defense has identified would suggest these children were not
12 assaulted. Not one.

13 They give an amazing amount of detail to describe
14 an object they've never seen. There is no evidence that
15 these children even know what this item is. What's shocking,
16 I mean, really, if you think about it, is that they give
17 those descriptions and you know what they are talking about.
18 You know. You know exactly what they are talking about.
19 Even in their young words, with their level of cognitive
20 development, they are able to communicate consistently and
21 repeatedly and they are able to tell you what it was. They
22 just don't have anything to compare it to. How could you
23 compare an adult penis to anything that a seven-year-old has
24 ever put in their mouth?

25 Impoverished details. I mean, I want you to think
26 about an important event in your life. I usually think
27 about, you know, the birth of my child. And, I mean, I
28 remember some things really very clearly. I remember being

1 in the hospital. I remember my OBGYN was there. I remember
2 my husband was there. I'm 100 percent confident that the
3 anaesthesiologist was male. If you asked me if he had hair,
4 no hair, blond hair, brown hair, I have no idea. I have no
5 idea. I don't know what color my hospital gown was. I don't
6 know how long I was in there. I have no idea any of those
7 facts, but I am 100 percent confident that I left that
8 hospital with my baby. That, I know. You remember the
9 details that are important to you.

10 Now, imagine you have to remember those details
11 without the benefit of your sight. It's suggested that we
12 should have gotten a free-flowing narrative from a
13 seven-year-old. Have you tried to have a conversation with a
14 seven-year-old? I mean, I asked my seven-year-old: Hey,
15 what did you do at school? Let me tell you what kind of
16 shoes Janie was wearing, what kind of pants I want to get
17 tomorrow. I mean, these are the things that are important to
18 them. It is not possible to have a free-flowing narrative
19 with a seven-year-old or eight-year-old child about an event
20 that happened two years ago to them. It's just not possible.

21 You have to ask children the right question. Mr.
22 Madden's very offended that Isabell had never before said
23 that after this event she heard a zipper. Never asked. She
24 was never asked. Found it. It's here. On page 13 of her
25 transcript, Det. Pierce asks her, "And before he puts it in
26 your mouth, do you hear anything?" And she says, "No."
27 "Could you hear him do anything?" "No." See, nobody ever
28 asked her about after.

1 This is a true story. My nephew came home from
2 school and he's got a Band-Aid on his finger. He tells my
3 sister that Jeremy bit him. So my sister says, That seems
4 bad. What did you do to Jeremy? And he says, Well, I put my
5 finger in Jeremy's face. Why did you do that? I don't know.
6 I just wanted to. So my sister, of course, can't remember
7 who Jeremy is, calls me and has my nephew explain to me what
8 the -- my nephew had done. Don't put your finger's in
9 people's faces anymore. It's not a good thing to do. Okay,
10 Auntie, I won't.

11 Next day, we all get the class picture, we all sit
12 around Trevor, Which one is Jeremy? Jeremy is not there.
13 What do you mean Jeremy is not there? He's not there. He's
14 not in the picture. Third day, Okay, Trevor, I want you to
15 go to school, you need to apologize to Jeremy. You need to
16 tell Jeremy, I'm sorry that I put my finger in your face and
17 I won't do it anymore. Okay?

18 Comes home. Third day, Do you apologize to Jeremy?
19 Yes. What did Jeremy say? Jeremy does not speak. Jeremy is
20 non-verbal? What do you mean Jeremy doesn't speak? What did
21 Jeremy say when you said, I'm sorry? Well, Jeremy doesn't
22 speak. Jeremy is the hamster.

23 See, you have to ask the right questions of
24 children or they won't give you the information. They're not
25 trying to trick you. They're not trying to hide something
26 from you. They are responding to your questions, and if you
27 don't ask the right question, they won't give you the
28 information.

1 Mr. Madden's suggestion of how someone would react
2 to an act of oral copulation is exaggerated, unrealistic, and
3 frankly offensive. I'm going to go out on a limb here and
4 say, I don't think he has any idea how someone reacts to an
5 act of oral copulation.

6 He wants to talk to you about details that don't
7 make sense. Like, he didn't tell them not to tell anyone.
8 He says, Well, where is the child porn? Right. We did this
9 forensic interview of the phone, where is all this child
10 porn? Good question. Where are the texts? Annie tells you
11 that they spent quite some time texting back and forth.
12 Didn't find those either. They are not there. What happened
13 to them? I'm going to guess anything that he didn't want us
14 to find wasn't there.

15 He isolates the children. He says, Well, of
16 course, he really didn't because that door could have been
17 opened or the door -- the adjoining door. You know, that's
18 very sloppy. Well, it's really not that sloppy. He never
19 got caught. Not once. Let's be clear, the defense in this
20 case is not that these incidents didn't occur at all. It's
21 just that it wasn't his penis. I mean, it's not like
22 somebody walked into his classroom and said, Hey, probably
23 not a good idea to be giving a Snickers bar to a kid. He
24 never got caught. So either that door was locked or he knew
25 he was safe. It's not like anybody even found him doing
26 anything innocent.

27 So the other thing I will suggest to you is this.
28 When you talk about details that don't make sense in the

1 context of committing a crime, I will tell you my one other
2 favorite story. I had a witness on the stand once, Kevin
3 Abrazeme (phonetic) from the San Jose Police Department. He
4 was excellent. He's being ripped by the defense attorney:
5 Are you seriously telling me that my client gave you consent
6 to search the glove box, knowing that he had 15 bindles of
7 heroin in there? Sergeant Abrazeme looked at him and said,
8 "Sure. We don't catch the smart ones." Not suggesting to
9 you that Craig Chandler was smart about any of this. This is
10 all absurd, that none of us could even imagine happening.
11 But don't think that just because he got a little sloppy,
12 that he didn't do what he's accused of doing. It's how he
13 got caught doing what he was doing.

14 So let's talk about the details that do make sense.
15 Dr. O'Donohue did actually give us a little bit of
16 information about some of these things. Child molesters
17 don't want to get caught, so they create games. They create
18 stories. Plausible deniability they call it; right? The
19 horsy game, the tickle game, the blindfold game, it's a way
20 that you could explain your conduct.

21 You choose your victims very carefully; right? All
22 of these little girls are remarkably similar; right? All
23 same age group, same basic size, relatively meek, not super
24 outspoken, all good girls.

25 He's in the classroom with the door locked to give
26 him access to them, he blindfolds them so they can't see and
27 describe what's happening to them, and he desensitized them
28 by exposing them to a blindfold in a neutral setting; right?

1 I mean, I say we don't catch the smart ones, but actually,
2 this is pretty well thought out; right? This is someone who
3 has planned his ultimate capture. This is someone who's
4 actually planned that far ahead and has desensitized these
5 children to this happening so that they won't cry, they
6 couldn't scream out, they won't tell anybody. They don't
7 know they have anything to tell.

8 Five girls. Mr. Madden won't call them a liar, but
9 that's exactly what he's doing. You would have to believe
10 that these children came in here and lied to you in order to
11 acquit this man. It's easier to criticize the investigation
12 or parents. Don't call little girls liars. It's not a good
13 strategy. Rely on the defense expert's report. For \$20,000,
14 we got to figure he could come up with something.

15 Facts that you just can't teach. How do they come
16 up with the same thing? But how do they all know to describe
17 it as round? As gooey? I couldn't close my mouth around it?
18 Something -- I mean, how do they all know to have the same
19 description?

20 These are girls that come from two separate class
21 years. I mean, to suggest that these girls have made this up
22 for what? Because they are motivated by money because they
23 filed civil lawsuits? I mean, these parents have allowed
24 their children to go through this horrible process, this
25 process is horrible for children, to set them up to be
26 victims? Every statement they gave was made before any
27 lawsuit was filed.

28 You know, there was a principal at this school on

1 actual notice that this was going on. This is blood curdling
2 anger. She could have stopped this. This woman did nothing.
3 It's outrageous. It's criminal. She did nothing to stop
4 this. She didn't report it to anyone. Of course, they are
5 suing.

6 And Mr. Madden wants to talk to you about the notes
7 she created later. You mean, after everybody gets in a
8 storm? After everybody knows they are going to get sued?
9 Those are the notes that are more reliable as opposed to the
10 ones that she's taking with the child standing right in front
11 of her, handwriting down in quotations. You'll notice those
12 second notes are not in evidence. They are not going with
13 you to the jury room because they are not reliable.

14 He wants to suggest to you that this is a valid
15 lesson plan. Where are the boys? I mean, he actually put on
16 a defense; right? We marched, what, eight little boys in
17 here. I had one question for each of them: "Did he ever
18 pull you into your room all by yourself and put something in
19 your mouth, have it choke you a little, push your head back
20 and forth? Did that ever happen to you?" "No, Ms. Filo,
21 that didn't happen." "Okay, Marcus. Thank you very much for
22 coming in." Where are the boys that he had to do this with?

23 What's the thing? What is it? Has a
24 constitutional right not to testify, but he put on a defense.
25 He put on witnesses. Where is the child who was, like, you
26 mean, the whatever? Well, that makes sense, then we would
27 all understand it. Where is that child? We interviewed 77
28 children from his classroom. He has all of that information.

1 If a single one of them could give any plausible explanation
2 of what was put in those five children's mouth, they will be
3 in here. You would have heard from them.

4 There is no evidence in this record at all that the
5 crime laboratory could test for saliva. No evidence in the
6 record at all. I will tell you what is in the record, that
7 Craig Chandler's semen is found on one spot on SYO-01,
8 confirmed on one spot on SYO-02, and presumptively confirmed
9 on four other spots on that chair.

10 I'm going to leave with you two final thoughts:
11 First, what are the chances? I mean, what are the chances?
12 Statistically, how many classrooms across the country do you
13 think have the teachers sperm in them? I mean, I could only
14 pray that it's one. I mean, a second-grader's classroom with
15 the teacher's sperm in it, I mean, it's inconceivable to most
16 people. And that happens to be the one teacher that these
17 five little girls come in and say, "He put something in my
18 mouth." What are the chances of that? Zero. I submit to
19 you that there is no other reasonable explanation to any of
20 the evidence that you have heard. None that will explain
21 this conduct.

22 So you're left with this, and it is the thing that
23 has always concerned me the most about this particular case.
24 What happened in this case is unimaginable; it's horrifying.
25 People do not want to believe that this happens. They don't
26 want to believe it. We don't want to believe that we send
27 our children into the hands of monsters like that. It's
28 horrifying, but it happens. Sean Pierce looks like that

1 because he buys and sells children for sex. This happens.
2 It happens in the most horrifying and awful places
3 unimaginable. No one wants to believe that the monsters walk
4 amongst us, but they do.

5 I started this case by telling you that Craig
6 Chandler was a wolf in sheep's clothing. He's not anymore.
7 He's just a wolf. Thank you.

8 THE COURT: Thank you, Ms. Filo.

9 Ladies and gentlemen of the jury, I have one final
10 instruction to read to you. That's page 33 on your packet.
11 It's CALCRIM 3550, which I'll read to you at this time.

12 When you go to the jury room, the first thing you
13 should do is choose a foreperson. The foreperson should see
14 to it that your discussions are carried on in an organized
15 way and that everyone has a fair chance to be heard.

16 It is your duty to talk with one another and to
17 deliberate in the jury room. You should try to agree on a
18 verdict if you can. Each of you must decide the case for
19 yourself, but only after you have discussed the evidence with
20 the other jurors. Do not hesitate to change your mind if you
21 become convinced that you are wrong. But do not change your
22 mind just because other jurors disagree with you.

23 Keep an open mind and openly exchange your thoughts
24 and ideas about this case. Stating your opinions too
25 strongly at the beginning or immediately announcing how you
26 plan to vote may interfere with an open discussion.

27 Please treat each other with consideration. Your
28 role is to be an impartial judge of the facts, not to act as

1 an advocate for one side or the other.

2 As I told you at the beginning of the trial, do not
3 talk about the case or about any of the people or any subject
4 involved in it with anyone, including, but not limited to,
5 your spouse or other family, or friends, spiritual leaders or
6 advisors, or therapist. You must discuss the case only in
7 the jury room and only when all jurors are present. Do not
8 discuss your deliberations with anyone. Do not communicate
9 any electronic device during your deliberations.

10 It is very important that you not use the Internet
11 or any other source in any way in connection with this case
12 during your deliberations.

13 During the trial, several items were received into
14 evidence as exhibits. You may examine whatever exhibits you
15 think will help you in your deliberations. These exhibits
16 will be sent into the jury room with you when you begin to
17 deliberate.

18 If you need to communicate with me while you are
19 deliberating, send a note through the bailiff, signed by the
20 foreperson or by one or more members of the jury. To have a
21 complete record of this trial, it is important that you not
22 communicate with me except by written note. If you have
23 questions, I will talk with the attorneys before I answer, so
24 it may take some time. You should continue your
25 deliberations while you wait for my answer. I will answer
26 any questions in writing or orally here in open court.

27 Do not reveal to me or anyone else how the vote
28 stands on the question of guilt or other issues in this case

1 unless I ask you to do so.

2 Your verdict on each count and any special findings
3 must be unanimous. This means that, to return a verdict, all
4 of you must agree to it. Do not reach a decision by the flip
5 of the coin or any similar act.

6 It is not my role to tell you what your verdict
7 should be. Do not take anything I said or did during the
8 trial as an indication of what I think about the facts, the
9 witnesses, or what your verdict should be.

10 You must reach your verdict without any
11 consideration of punishment.

12 You will be given verdict forms. As soon as all
13 jurors have agreed on a verdict, the foreperson must date and
14 sign the appropriate verdict forms and notify the bailiff.
15 If you are able to reach a unanimous decision on only one or
16 only some of the charges, fill in those verdict forms only
17 and notify the bailiff.

18 Return any unsigned verdict forms.

19 Ladies and gentlemen of the jury, in just a moment,
20 you will be escorted into the jury room where you'll begin
21 your deliberations. We will send in the exhibits as soon as
22 possible. It will be shortly after you leave. We will also
23 send verdict forms in there after as well.

24 I want to go off the record briefly to talk about
25 your schedule.

26 (Whereupon, there was a discussion off the record.)

27 THE COURT: We will swear in the deputy at this
28 time.

1 (Whereupon, the Deputy was sworn to take charge of
2 the jury.)

3 THE COURT: To our four alternate jurors, the jury
4 is now deliberating, but you are still alternate jurors and
5 are bound by my earlier instructions about your conduct.

6 Do not talk about the case or about any of the
7 people or any subject involved in it with anyone, not even
8 your family or friends and not even with each other.

9 Do not have any contact with the deliberating
10 jurors.

11 Do not decide how you would vote if you were
12 deliberating.

13 Do not form or express an opinion about the issues
14 of this case unless you are substituted for one of the
15 deliberating jurors.

16 I'm going to go off the record briefly with the
17 four remaining jurors.

18 (Whereupon, there was a discussion off the record.)

19 THE COURT: The Court's had an off-the-record
20 discussion with our four alternate jurors. Each juror has
21 represented to the Court that they want to be on telephone
22 standby, and they will be on call and appear in court within
23 a reasonable period of time if their presence is required.
24 All four have requested to be present for the verdicts if and
25 when they are rendered.

26 So, all four jurors, now that you have given us
27 your contact information, you are free to leave, but you are
28 ordered to be on telephone standby between 9 and 5. You are

1 welcome to call the court at any time if you are wondering
2 what is going on or if there is a status. Feel free to call
3 us. Okay? Otherwise, you are all free to leave. Thank you
4 very much.

5 The record will reflect that the four additional
6 jurors have left the courtroom. All members of the jury are
7 now out of the courtroom. Counsel and Mr. Chandler are
8 present.

9 I just handed proposed verdict forms to Ms. Filo,
10 and I'm going to ask both counsel to take a look at them.
11 And if they are comfortable with the verdict forms, we'll
12 send them into the jury. If they are not, we'll discuss it
13 further.

14 I'm going to ask the lawyers to be on telephone
15 standby as well. If you give us your contact numbers, you're
16 free to leave. As I hope you both know, if there is a
17 question from the jurors -- excuse me. If there is a
18 question from the jury, I will contact both counsel and share
19 with you what the question is. And depending on the nature
20 of the question, we could decide when we contact you whether
21 your presence will have to be here or not. Some things could
22 be taken care of over the phone. And -- off the record.

23 (Whereupon, there was a discussion off the record.)

24 THE COURT: Counsel is looking over the verdict
25 forms. Is there anything further we need to address before
26 we recess?

27 MR. MADDEN: No, Your Honor.

28 MS. FILO: No, Your Honor. The verdict forms look

1 fine to me.

2 THE COURT: You've shown Mr. Madden?

3 MR. MADDEN: I'm good.

4 THE COURT: Okay. Thank you. We'll be in recess
5 at this time.

6 (Whereupon, the Court recessed.)
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 STATE OF CALIFORNIA)
2 COUNTY OF SANTA CLARA)
3

4 I, JAMIE L. MIXCO, HEREBY CERTIFY THAT:

5 The foregoing is a full, true, and correct
6 transcript of the testimony given and proceedings had in the
7 above-entitled action taken on the above-entitled date; that
8 it is a full, true, and correct transcript of the evidence
9 offered and received, acts and statements of the Court, also
10 all objections of counsel, and all matters to which the same
11 relate; that I reported the same in stenotype to the best of
12 my ability, being the duly appointed and official
13 stenographic reporter of said Court, and thereafter had the
14 same transcribed into typewriting as herein appears.

15 I further certify that I have complied with CCP
16 237(a)(2) in that all personal juror identifying information
17 has been redacted if applicable.

18
19 Dated:

20

21

22 _____
23 Jamie L. Mixco, C.S.R.
Certificate No. 12708

24 ATTENTION:
25 CALIFORNIA GOVERNMENT CODE
SECTION 69954(D) STATES:

26 "ANY COURT, PARTY, OR PERSON WHO HAS PURCHASED A TRANSCRIPT
27 MAY, WITHOUT PAYING A FURTHER FEE TO THE REPORTER, REPRODUCE
28 A COPY OR PORTION THEREOF AS AN EXHIBIT PURSUANT TO COURT
ORDER OR RULE, OR FOR INTERNAL USE, BUT SHALL NOT OTHERWISE
PROVIDE OR SELL A COPY OR COPIES TO ANY OTHER PARTY OR
PERSON."

EXHIBIT 3

(Vol. 19)

TO THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

---o0o---

THE PEOPLE OF THE STATE OF)
CALIFORNIA,)

Plaintiff - Respondent,)

v.)

No. C1223754

CRAIG RICHARD CHANDLER,)

Defendant - Appellant.)

COPY

VOLUME 19

PAGES 1672 - 1685

AUGUST 1, 2013

---o0o---

REPORTER'S TRANSCRIPT ON APPEAL
FROM THE JUDGMENT OF THE SUPERIOR COURT
OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SANTA CLARA
BEFORE THE HONORABLE ARTHUR BOCANEGRA, JUDGE, AND JURY

---o0o---

APPEARANCES:

FOR PLAINTIFF-RESPONDENT: OFFICE OF THE ATTORNEY GENERAL
BY: KAMALA D. HARRIS,
Attorney General of the State
of California

FOR DEFENDANT-APPELLANT: In Propria Persona

— — — 00 — — —

DEFENDANT.

CASE NO. C1223754

— — — o o — — —

AUGUST 1, 2013

— — — 0 0 — — —

JAMIE L. MIXCO
C.S.R. No. 12708

1 San Jose, California August 1, 2013

2 PROCEEDINGS

3 THE COURT: We'll go on the record on the matter of
4 the People v. Chandler. Record should reflect all 12 jurors
5 who are deliberating are present in the courtroom. I brought
6 you out here because the jury room is a little tight and I
7 just thought it might be more comfortable.

8 I have read and considered your question. I called
9 the attorneys. They both came down here. We discussed your
10 question and they both agreed that they would waive their
11 appearances and Mr. Chandler's appearance, and based on our
12 discussions, allow me to answer your question. And I told
13 them specifically what I was going to say to you, and they
14 were in agreement with it.

15 First of all, I want to indicate that Penal Code
16 §667.61(e) says the following:

17 The defendant has been convicted in the present
18 case of committing an offense specified in (c) against more
19 than one victim. 667.61(c) simply lists the type of offenses
20 that apply to 667.61(e). The crimes charged in this case,
21 the Penal Code §288(a), is a crime that's listed in
22 667.61(e).

23 Now, the attorneys indicated they were comfortable
24 with me giving you an example of what this means because this
25 is the law. In a case where you have five charges, like in
26 our case, and these are hypotheticals, if you found a
27 defendant guilty of Count 1 that involved Isabell, let's say,
28 and not guilty of Counts 2, 3, 4, and 5, which involved four

1 different victims, then the multiple victim allegation
2 wouldn't apply because we only have one Isabell. If the jury
3 found the defendant guilty of Counts 1 and 2, Isabell and I
4 will say just Becky, because I don't remember the names off
5 the top of my head, and not guilty of 3, 4 and 5, well, then
6 the multiple victim would apply to Counts 1 and 2 because you
7 have two victims, multiple victims.

8 Another example. Hypothetically, let's say you
9 have five charges of 288(a) and the Victim A was charged in
10 Counts 1 and 2, and Victim B was charged in Counts 3, 4 and
11 5, and you found the defendant guilty of Counts 1 and 2 and
12 not guilty of 3, 4 and 5, you have one victim, Victim A. So
13 it wouldn't apply in that case, the allegation.

14 If you found the person guilty of Counts 1 and 2 of
15 A, Count 3 of Victim B, and not guilty of the rest of the
16 counts, well, you have multiple victims, it would apply to
17 Counts 1, 2 and 3.

18 Does that kind of clear up your question and if I
19 answered it? Once -- and I see some jurors nodding their
20 head. Once you get back into the jury room, if there is
21 still some confusion, if you would just send me another
22 question written formally try to clarify it again. Okay?

23 JUROR NO. 12: Your Honor, it is preliminarily an
24 issue of multiple victims --

25 THE COURT: Right.

26 JUROR NO. 12: -- in this case.

27 THE COURT: In this case, right. And your question
28 about multiple counts was an excellent question because there

1 was confusion, I think, because it wasn't very clear.

2 Now, what I'm going to is ask you to go back in the
3 jury room to deliberate, and just so you know, my court
4 reporter is going to read back to the lawyers exactly what I
5 told you, plus your follow-up questions. And if they believe
6 I said anything that was inaccurate or incorrect, I will
7 bring you back immediately and clarify that. Okay? Thank
8 you very much.

9 (Whereupon, the Court recessed.)

10 THE COURT: Let's go on the record. The record
11 will reflect that the jury went back into the jury
12 deliberation room. Both counsel are here. One thing I didn't
13 discuss with you, Counsel, I told the jury that I discussed
14 this with you, and with your agreement, I am going to answer
15 your question orally in court without their presence. They
16 both waived their appearance, as well as Mr. Chandler's
17 appearance, and you did not specifically say that, Mr.
18 Madden, but I --

19 MR. MADDEN: Had you asked, I would have.

20 THE COURT: I assumed his presence was waived as
21 well. My court reporter is going to pull up what I told them
22 and going to read it back to you. And I told the jurors that
23 this was going to occur. If I said anything that was
24 inaccurate, not correct based on our discussions, the lawyers
25 will point it out to me and I will clarify it immediately.

26 There was a follow-up question, took me by
27 surprise. Juror No. 12 said basically this allegation deals
28 primarily with just multiple victims, and I said yes. Okay?

1 My exceptional court reporter is going to pull this up and
2 read it back to you.

3 (Whereupon, the Court recessed.)

4 THE COURT: Thank you, ladies and gentlemen. The
5 record will reflect all members of the jury are present, both
6 counsel are present, Mr. Chandler is present.

7 It's my understanding that the jury has reached a
8 verdict; is that correct? Who is the foreperson? That's
9 Juror No. 3. Is that correct, jury has reached verdicts?

10 JUROR NO. 3: Yes, Your Honor.

11 THE COURT: Would you please hand the verdicts --
12 you already handed the verdicts to my deputy. Thank you very
13 much.

14 At this time, I'll ask our clerk to please read the
15 verdicts.

16 THE CLERK: In the Superior Court of California,
17 county of Santa Clara, case number C1223754, People of the
18 State of California v. Craig Richard Chandler, verdict of the
19 jury:

20 Count 1, we the jury, in the above-entitled cause,
21 find the defendant, Craig Richard Chandler, guilty of lewd
22 and lascivious act on a child under 14, in violation of Penal
23 Code §288(a), a felony, as charged in the Information. Dated
24 August 1, 2013. Signed by the foreperson.

25 In the same court and cause, allegation to Count 1:

26 We, the jury, having found the defendant, Craig
27 Richard Chandler, guilty of the crime of lewd and lascivious
28 act on a child under 14, as charged in Count 1, further find

1 the allegation, that the defendant has been convicted in the
2 present case or cases of committing an offense specified in
3 (c) against more than one victim, within the meaning of Penal
4 Code §667.61(b) and 667.61(e) to be true. Dated August 1,
5 2013. Signed by the foreperson.

6 In the same court and cause, Count 2, verdict of
7 the jury:

8 We, the jury, in the above-entitled cause, find the
9 defendant, Craig Richard Chandler, guilty of lewd and
10 lascivious act on a child under 14, in violation of Penal
11 Code §288(a), a felony, as charged in the Information. Dated
12 August 1, 2013. Signed by the foreperson.

13 The same court and cause, allegation Count 2:

14 We, the jury, having found the defendant, Craig
15 Richard Chandler, guilty of the crime of lewd and lascivious
16 act on a child under 14, as charged in Count 2, further find
17 the allegation, that the defendant has been convicted in the
18 present case or cases of committing an offense specified in
19 (c) on more than one victim, within the meaning of Penal Code
20 §667.61(b) and 667.61(e) to be true. Dated August 1, 2013.
21 Signed by the foreperson.

22 In the same court and cause, verdict of the jury,
23 Count 3:

24 We, the jury, in the above-entitled cause, find the
25 defendant, Craig Richard Chandler, guilty of lewd and
26 lascivious act on a child under 14, in violation of Penal
27 Code §288(a), a felony, as charged in the Information. Dated
28 August 1, 2013. Signed by the foreperson.

1 In the same court and cause, allegation to Count 3:
2 We, the jury, having found the defendant, Craig
3 Richard Chandler, guilty of the crime of lewd and lascivious
4 act on a child under 14, as charged in Count 3, further find
5 the allegation, that the defendant has been convicted in the
6 present case or cases of committing an offense specified in
7 (c) against more than one victim, within the meaning of Penal
8 Code §667.61(b) and 667.61(e) to be true. Dated August 1,
9 2013. Signed by the foreperson.

10 In the same court and cause, verdict of the jury,
11 Count 4:

12 We, the jury, in the above-entitled cause, find the
13 defendant, Craig Richard Chandler, guilty of lewd and
14 lascivious act on a child under 14, in violation of Penal
15 Code §288(a), a felony, as charged in the Information. Dated
16 August 1, 2013. Signed by the foreperson.

17 In the same court and cause, allegation to Count 4:

18 We, the jury, having found the defendant, Craig
19 Richard Chandler, guilty of the crime of lewd and lascivious
20 act on a child under 14, as charged in Count 4, further find
21 the allegation, that the defendant has been convicted in the
22 present case or cases of committing an offense specified in
23 (c) against more than one victim, within the meaning of Penal
24 Code §667.61(b) and 667.61(e) to be true. Dated August 1,
25 2013. Signed by the foreperson.

26 In the same court and cause, verdict of the jury,
27 Count 5:

28 We, the jury, in the above-entitled cause, find the

1 defendant, Craig Richard Chandler, guilty of lewd and
2 lascivious act on a child under 14, in violation of Penal
3 Code §288(a), a felony, as charged in the Information. Dated
4 August 1, 2013. Signed by the foreperson.

5 In the same court and cause, allegation to Count 5:

6 We, the jury, having found the defendant, Craig
7 Richard Chandler, guilty of the crime of lewd and lascivious
8 act on a child under 14, as charged in Count 5, further find
9 the allegation, that the defendant has been convicted in the
10 present case or cases of committing an offense specified in
11 (c) against more than one victim, within the meaning of Penal
12 Code §667.61(b) and 667.61(e) to be true. Dated August 1,
13 2013. Signed by the foreperson.

14 Thank you, Mr. Clerk.

15 Ladies and gentlemen of the jury, at this time I'm
16 going to poll you. I'm going to ask each juror one through
17 12 are these your verdicts. Your response should be yes or
18 no. I'm going to start with Juror No. One, are these your
19 verdicts?

20 JUROR NO. 1: Yes.

21 THE COURT: Juror No. 2, are these your verdicts?

22 JUROR NO. 2: Yes.

23 THE COURT: Juror No. 3, are these your verdicts?

24 JUROR NO. 3: Yes.

25 THE COURT: Juror No. 4, are these your verdicts?

26 JUROR NO. 4: Yes.

27 THE COURT: Juror No. 5, are these your verdicts?

28 JUROR NO. 5: Yes.

1 THE COURT: Juror No. 6, are these your verdicts?

2 JUROR NO. 6: Yes.

3 THE COURT: Juror No. 7, are these your verdicts?

4 JUROR NO. 7: Yes.

5 THE COURT: Juror No. 8, are these your verdicts?

6 JUROR NO. 8: Yes.

7 THE COURT: Juror No. 9, are these your verdicts?

8 JUROR NO. 9: Yes.

9 THE COURT: Juror No. 10, are these your verdicts?

10 JUROR NO. 10: Yes.

11 THE COURT: Juror No. 11, are these your verdicts?

12 JUROR NO. 11: Yes.

13 THE COURT: Juror No. 12, are these your verdicts?

14 JUROR NO. 12: Yes.

15 THE COURT: Thank you. Court will order that the
16 verdicts read will be recorded at this time.

17 Ladies and gentlemen of the jury, I have one
18 additional instruction I will read to you.

19 You have now completed your jury service on this
20 case. On behalf of all of the judges in this court, please
21 accept my thank you for your time and effort.

22 Now that the case is over, you may choose whether
23 or not to discuss the case and your deliberations with
24 anyone. Let me tell you about some rules the law puts in
25 place for your convenience and protection. The lawyers in
26 this case, the defendant, or their representatives may now
27 talk to you about the case, including your deliberations or
28 verdicts. Those discussions must occur at a reasonable time

1 and place and with your consent. Please tell me immediately
2 if anyone unreasonably contacts you without your consent.
3 Anyone who violates these rules is violating a court order
4 and may be fined.

5 I will order that the court's record of personal
6 juror identifying information, including names, addresses,
7 and telephone numbers be sealed until further order of this
8 court.

9 You have completed your service as jurors. In a
10 moment I will be excusing you. Before I do that, ladies and
11 gentlemen, I'm going to ask all jurors, all 16 of you, to
12 please follow Deputy Armenta. He's going to escort you into
13 the jury room and get your personal belongings, whatever you
14 might have left in there. I will bring you back and release
15 you in a few minutes. Okay? If you would please follow
16 Deputy Armenta. You could come, I believe, right here in
17 front of the bench. Just be careful that you don't trip over
18 anything, please. Thank you. Again, you are free to discuss
19 the case with anyone while your in there, including the
20 alternates.

21 The record will reflect the jury has exited the
22 courtroom. Mr. Madden, it's my intent to refer this matter
23 to Adult Probation for a full probation report and have the
24 matter return for pronouncement of judgment on a Friday at
25 9:00 a.m. Do you have a date you would request, Mr. Madden?

26 MR. MADDEN: Um, sometime in mid- or late September
27 be acceptable?

28 THE COURT: Yes. Mr. Madden, I could set this

1 either on September 13th or September 27th.

2 MR. MADDEN: Let's do the 27th.

3 THE COURT: Okay. And since you're requesting that
4 date, I'm assuming time for sentencing is waived.

5 Is that date acceptable to you, Ms. Filo?

6 MS. FILO: It is, Your Honor. Thank you.

7 THE COURT: Okay. Then the matter is set for
8 September 27th at 9:00 a.m. in this department for
9 pronouncement of judgment. I will order both attorneys and
10 Mr. Chandler here on that date and time.

11 At this time, the Court will remand Mr. Chandler
12 into custody, no bail, and he may be removed from the
13 courtroom at this time. Actually, we are going to be in
14 recess in a minute. We're going to clear the courtroom, so
15 I'm going to be asking all members of the public to leave the
16 courtroom since we're in recess, and that concludes this
17 matter.

18 Mr. Chandler is remanded into custody. So the
19 Court is going to be in recess for a few minutes. I did
20 communicate your request, Mr. Madden, to our deputy. We'll
21 address that momentarily.

22 MR. MADDEN: Fine.

23 THE COURT: Okay. So we'll be in recess.

24 MR. MADDEN: You mean including his family?

25 THE COURT: Yes, that's what I'm referring to.

26 MR. MADDEN: Thank you.

27 (Whereupon, the Court recessed.)

28 THE COURT: Record will reflect that Ms. Filo is

1 present, Officer Pierce is present, and the two chairs, which
2 are exhibits what?

3 THE CLERK: 10 and 11.

4 THE COURT: 10 and 11. Court is going to take
5 photographs of both chairs and return both chairs to the San
6 Jose Police Department.

7 MS. FILO: Please, Your Honor.

8 THE COURT: And I'm going to order Officer Pierce
9 to return Monday by 5:00 o'clock to pick up the chairs.

10 DET. PIERCE: Any time Monday?

11 THE COURT: Any time Monday. I would just suggest
12 that you call before you come so we're expecting you in case,
13 you know, everything is ready. That will be the order.

14 (Whereupon, the Court recessed.)
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 STATE OF CALIFORNIA)
2 COUNTY OF SANTA CLARA)
3

4 I, JAMIE L. MIXCO, HEREBY CERTIFY THAT:

5 The foregoing is a full, true, and correct
6 transcript of the testimony given and proceedings had in the
7 above-entitled action taken on the above-entitled date; that
8 it is a full, true, and correct transcript of the evidence
9 offered and received, acts and statements of the Court, also
10 all objections of counsel, and all matters to which the same
11 relate; that I reported the same in stenotype to the best of
12 my ability, being the duly appointed and official
13 stenographic reporter of said Court, and thereafter had the
14 same transcribed into typewriting as herein appears.

15 I further certify that I have complied with CCP
16 237(a)(2) in that all personal juror identifying information
17 has been redacted if applicable.

18
19 Dated:

20
21
22 _____
23 Jamie L. Mixco, C.S.R.
Certificate No. 12708

24 ATTENTION:
25 CALIFORNIA GOVERNMENT CODE
SECTION 69954(D) STATES:

26 "ANY COURT, PARTY, OR PERSON WHO HAS PURCHASED A TRANSCRIPT
27 MAY, WITHOUT PAYING A FURTHER FEE TO THE REPORTER, REPRODUCE
28 A COPY OR PORTION THEREOF AS AN EXHIBIT PURSUANT TO COURT
ORDER OR RULE, OR FOR INTERNAL USE, BUT SHALL NOT OTHERWISE
PROVIDE OR SELL A COPY OR COPIES TO ANY OTHER PARTY OR
PERSON."

EXHIBIT 3

(Vol. 20)

TO THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

---o0o---

THE PEOPLE OF THE STATE OF)
CALIFORNIA,)

Plaintiff - Respondent,)

v.)

No. C1223754

CRAIG RICHARD CHANDLER,)

Defendant - Appellant.)

COPY

VOLUME 20

PAGES 1686 - ~~1706~~ 1705

NOVEMBER 22, 2013

---o0o---

REPORTER'S TRANSCRIPT ON APPEAL
FROM THE JUDGMENT OF THE SUPERIOR COURT
OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SANTA CLARA
BEFORE THE HONORABLE ARTHUR BOCANEGRA, JUDGE, AND JURY

---o0o---

APPEARANCES:

FOR PLAINTIFF-RESPONDENT: OFFICE OF THE ATTORNEY GENERAL
BY: KAMALA D. HARRIS,
Attorney General of the State
of California

FOR DEFENDANT-APPELLANT: In Propria Persona

— 00 —

CASE NO. C1223754

— 00 —

NOVEMBER 22, 2013

---o0o---

JAMIE L. MIXCO
C.S.R. No. 12708

1 San Jose, California November 22, 2013

2 PROCEEDINGS

3 THE COURT: Thank you, ladies and gentlemen.
4 Welcome to Department 37. We'll call the matter of the
5 People v. Chandler.

6 Counsel, state your appearances for the record.

7 MR. MADDEN: Brian Madden appearing for Mr.
8 Chandler, Your Honor. He's present.

9 MS. FILO: Good morning, Your Honor. Alison Filo
10 for the People.

11 THE COURT: Thank you.

12 Mr. Madden, before we proceed, is there any legal
13 cause why judgment should not now be imposed?

14 MR. MADDEN: No, Your Honor.

15 THE COURT: Do you waive formal arraignment for
16 pronouncement of judgment?

17 MR. MADDEN: Yes, I do.

18 THE COURT: Okay. I'll note for the record that I
19 have reviewed and considered the probation report, all of the
20 documents filed by counsel --

21 MR. MADDEN: May I interrupt, Your Honor?

22 THE COURT: Yes.

23 MR. MADDEN: Just so that I'm clear, I'm certain
24 that this is the case, but I want to ensure that the Court
25 has read my sentencing memorandum, that the Court also read
26 the character reference letters submitted by my client's
27 family and my client's letter. They were sent to the
28 probation department on October 2nd, and I assume the Court

1 had a chance to see those. And the third document that I
2 want to confirm the Court has read and reviewed is the
3 defense reply to the People's response to the defendant's
4 sentencing memorandum.

5 THE COURT: Yes, Mr. Madden, I have read and
6 considered the probation report, the supplemental memos filed
7 by probation, the written statement by Mr. Chandler, the 18
8 character letters that were submitted on Mr. Chandler's
9 behalf by family members and friends, the sentencing
10 memorandum filed by yourself, the People's response, and your
11 reply.

12 MR. MADDEN: Thank you.

13 THE COURT: So I think I have read everything that
14 has been submitted to the court.

15 MR. MADDEN: I believe that's an accurate statement
16 of the documents that were submitted.

17 THE COURT: Thank you, Mr. Madden.

18 Is there any -- initially, any corrections to the
19 probation report?

20 MR. MADDEN: I don't believe so, Your Honor. Not
21 that are significant.

22 THE COURT: Okay.

23 MS. SHANNON: Good morning, Your Honor. I have
24 updated custody credits if the Court would like those now?

25 THE COURT: Yes, thank you.

26 MS. SHANNON: As to Count 1, the defendant has 683
27 actual days, plus 102 days of 2933.1, for a total of 785
28 days.

1 THE COURT: Thank you, Ms. Shannon.

2 Ms. Filo, before I ask for comments by counsel, are
3 there any victims in the court that wish to address the
4 Court?

5 MS. FILO: No, Your Honor.

6 THE COURT: Okay. Thank you. Then I will invite
7 comments by counsel.

8 MR. MADDEN: Thank you, Your Honor.

9 I won't go over the legal comments that I made in
10 my sentencing memorandum or my reply. However, it is clear
11 that the law gives the Court discretion in this case. And
12 not withstanding the People's position, the legislature, case
13 law, the courts, there is no -- there has been no previous
14 guidance to the courts in these matters that would suggest
15 that the Court could impose consecutive sentences.

16 Every matter is case specific. I'm sure the Court
17 has read points and authorities on that, and the Court knows
18 that is the case. But I think we have to look at the
19 realities of this case in terms of what any sentence means.
20 No matter what sentence the Court chooses, whether it's 15 to
21 life, 30 to life, 45 to life, 60 to life, or 75 years to
22 life, the Court indeed is giving a life sentence. Period.
23 Certainly, if the Court imposes either 45 or 60 or 75 to
24 life, the reality of it is that Mr. Chandler at age 37 is
25 never going to be released from prison.

26 On the other hand, if the Court imposes either 15
27 or 30 years to life, there is that glimmer of hope that he
28 may be. And I want to emphasize "may be" because there are

1 obviously two safeguards in place that will protect the
2 public, should the Court choose to either impose the sentence
3 of either 15 to life or 30 to life.

4 Those safeguards are these:

5 The first and the immediate safeguard is the Parole
6 Board. Fifteen to life means that Mr. Chandler would not be
7 eligible for consideration for parole until he serves 85
8 percent of that 15 years. He's now 37. He would be 50 years
9 old at that time.

10 Likewise, if the Court imposes 30 years to life,
11 Mr. Chandler is now 37, will be 63 when he's first eligible
12 for consideration of parole.

13 The Court is well aware that the fact that a
14 life -- someone doing 15 or 30 to life is eligible for parole
15 does not mean they are going to be released at that minimum
16 eligibility date, and in fact history has indicated that that
17 never happens. The Parole Board's in place to protect the
18 public. Life sentence, they are never going to release
19 someone who they feel is a danger to the public. If Mr.
20 Chandler never meets that threshold, notwithstanding
21 receiving a 15 to life sentence, he's never going to be
22 released from prison. That's the first safeguard that is
23 available. There is a second one.

24 Should the Parole Board at some distant time in the
25 future decide to grant parole to Mr. Chandler, the People are
26 free to file an SVP petition in this court. If they do so,
27 those proceedings will ensue. There will be a trial on issue
28 of his dangerousness. If he's found to be a danger by a

1 jury, then he will be incarcerated in the state hospital
2 potentially for the rest of his life. In any event, until
3 the authorities decide that he's not a danger.

4 My point is, is that the public is protected even
5 on a 15 to life sentence. More importantly or -- excuse
6 me -- equally importantly, if we look at Mr. Chandler's
7 history just in this case in terms of since he's been
8 incarcerated, he has been a model prisoner. He has helped
9 other inmates incarcerated obtain their GED's. Before this,
10 he was a teacher for 9 years. No evidence of misconduct
11 until the period of time that surrounds this case.

12 Mr. Chandler has done many, many, many good things
13 in his life. He chose a profession that is not financially
14 rewarding, as did his wife. Mr. Chandler has indicated to
15 you in his statement, and I submit that he's being sincere
16 when he says, that when he is sentenced he's going to try to
17 lead the most productive life that he can while incarcerated.
18 That means taking advantage of whatever educational or
19 rehabilitation classes or courses are available to him, and
20 he's not going to give up.

21 I think if the Court imposes a sentence that gives
22 him a glimmer of hope there may be a day when he's released,
23 that will aid him in that effort, and I think others will
24 greatly benefit from that, not just his family and friends to
25 Mr. Chandler. Again, there is no guarantee that he's going
26 to be released, and there are two very important safeguards
27 in place that ensure that he will never be released unless
28 the authorities find that he's no longer a danger.

1 I will submit the matter at this point. I will not
2 submit the matter, but I will defer to Ms. Filo at this
3 point.

4 THE COURT: Thank you, Mr. Madden.

5 Ms. Filo.

6 MS. FILO: Your Honor, I agree with counsel that
7 this court has the discretion to run these sentences either
8 consecutively or concurrently. And that the Court does have
9 to employ a case-by-case analysis to determine whether or not
10 those sentences should be run consecutively or concurrently
11 in this particular case.

12 And when you think about the facts that played out
13 in this courtroom over the course of a month, I cannot
14 envision any case more deserving of consecutive sentences
15 than what we heard in this courtroom. We heard testimony
16 from five individual victims, who were selected, chosen,
17 brought into a courtroom -- brought into a classroom,
18 blindfolded, and had unspeakable and horrific things done to
19 them by the defendant. He put his penis in their mouths. A
20 jury unequivocally found him guilty of those offenses.

21 Mr. Chandler may have done other good things in his
22 life, but they are wholly and entirely overshadowed by his
23 conduct in the charged counts that are before this court.
24 Mr. Chandler deserves to spend the rest of his life in
25 prison, and the single greatest way to ensure that is the
26 sentence that is issued by this court at this time. There is
27 no reason to leave that determination to a future date to a
28 parole board or to a future SVP filing. This court has both

1 the opportunity, and I believe the obligation, to accurately
2 reflect the conduct involved in this case, and this court has
3 the opportunity in this case to say this is that bad, this is
4 that horrible, and you deserve every single minute of time in
5 prison that I can give you. And the People ask that you
6 issue that sentence.

7 THE COURT: Okay. Thank you.

8 Mr. Madden, any final comments?

9 MR. MADDEN: Just a couple, Your Honor.

10 Mr. Chandler, as he sits before you today, he's 37
11 years old. You're making a decision today that potentially
12 will prevent others from measuring who he is and his
13 dangerousness at some time in the future. I think that will
14 be a terrible mistake. It's unnecessary for the reasons I
15 previously stated. The public will be protected. This is
16 what the Parole Board does and that is what the SVP
17 proceedings are all about.

18 Should the Parole Board -- should the Court impose,
19 for example, a 15 to life sentence, and should the Parole
20 Board at some distant time in the future give him a date for
21 parole, because obviously that would mean they did not feel
22 he was a danger, the People, I would assume, would respond
23 with SVP proceedings. And assuming that he was found not to
24 be SVP, at that point Mr. Chandler should be released because
25 both the Parole Board and the proceedings in this court,
26 should they be found not to be true, or should the People
27 fail to meet their burden of proof, at that point he should
28 be released.

1 All I'm asking is for the Court to impose the
2 sentence to allow the possibility for others in the distant
3 future to conclude that he's salvageable, he's demonstrating
4 by years and years in prison that he should be released and
5 allowed to return to society, and that's the glimmer of hope
6 that I think is important. I believe in redemption of human
7 beings. I believe this court does also.

8 This case -- the worst of the worst cases, Your
9 Honor, are cases that involve force and violence. This is
10 not a case about force and violence. Force and violence
11 cases mandate consecutive sentences; non-forcible cases
12 don't. I don't believe the Court is taking any danger or any
13 risk by imposing a sentence that gives Mr. Chandler hope,
14 glimmer of hope and encouragement to live a productive life
15 in prison. Thank you.

16 THE COURT: Ms. Filo, anything further?

17 MS. FILO: Submitted, Your Honor.

18 MR. MADDEN: Your Honor, one moment, please. May I
19 have just a moment to confer with two members of the -- in
20 the audience?

21 THE COURT: Yes.

22 MR. MADDEN: Thank you. Your Honor, both Mr.
23 Chandler's mother and father would like to address the Court
24 if that will be acceptable?

25 THE COURT: Do you have any response, Ms. Filo?
26 They are not entitled to.

27 MS. FILO: I'll submit it to Your Honor.

28 THE COURT: Mr. Madden, I'm assuming that they both

1 submitted letters on behalf of Mr. Chandler.

2 MR. MADDEN: They did. Both Terry Chandler, his
3 father, and his mother, (unintelligible), she also submitted
4 a letter. I believe after Mr. Chandler in his letter, I
5 think they are the first two in the packet you received.

6 THE COURT: Well, Mr. Madden, you appreciate that
7 there is no authority to allow them to make comments to the
8 Court.

9 MR. MADDEN: I will submit the matter, Your Honor.

10 THE COURT: I spent a substantial amount of time
11 doing this particular case, reviewing this particular case.
12 As I mentioned, I did review every letter. This case, like
13 many, many others that I have seen, when an individual
14 commits a crime, it doesn't only impact that person that you
15 all know. The ripple effects are extremely broad. The
16 impact on the family of Mr. Chandler is enormous. The
17 ripples will continue long after this particular hearing.
18 But that applies to the victims and their families as well.
19 The impact and ripples they will have will last and continue
20 for many, many, many years after this particular date.

21 Although there is no right to address the Court,
22 I'm going to allow brief comments, Mr. Madden, by the mother
23 and father, which is quite frankly unusual, but they must be
24 brief.

25 MR. MADDEN: I will emphasize that, Your Honor.

26 THE COURT: And I may cut them off after a point if
27 I think I'm hearing things that are inappropriate or too
28 lengthy.

1 MR. MADDEN: Thank you, Your Honor.

2 THE COURT: With that understanding, I will allow
3 it.

4 MR. MADDEN: Thank you.

5 Apparently, only Mr. Chandler would like to address
6 the Court.

7 THE COURT: Right at the -- thank you, sir.

8 MR. TERRY CHANDLER: Your Honor, I just have a
9 statement that's not too long. My name is Terry Chandler.
10 I'm Craig's father. You have in your possession a letter to
11 you by Craig's family and friends. I could only hope that
12 you understand what we all are asking of you. Craig is a
13 good man, a very good father. He's made mistakes in his
14 marriage to which I know he regrets with all of his heart.
15 But, Your Honor, to no disrespect to this Court, he will
16 never harm a child. Craig loved being a teacher so much that
17 he put himself in precarious situations without thinking what
18 it might look like to others.

19 682 days ago we all prayed that the legal system
20 would see this for what it was, a mistake. After 30 years of
21 law enforcement, it's hard for me to accept the outcome or
22 make any sense of all of this. We're hoping for the truth,
23 and unfortunately this is not what happened. Craig lost his
24 home, his family, his career, now possibly a future. That
25 part is up to you, Your Honor. I speak for his family and
26 friends when I say that it serves no purpose in sending my
27 son to prison for the rest of his life, despite what anyone
28 here may lead you to believe.

1 Your Honor, I ask you for leniency in giving Craig
2 the minimum concurrent sentence. Give him a chance to
3 rebuild his life, give his family a chance to have their
4 husband, their father, son, and brother back. Your Honor, we
5 thank you for your consideration.

6 THE COURT: Thank you, sir.

7 Counsel, I'm going to take a short recess. I ask
8 you to please remain in the courtroom. I will be right back.

9 (Whereupon, a brief recess was taken.)

10 THE COURT: The record will reflect that both
11 counsel are present, Mr. Chandler is present. I will note
12 that as both parties know, everything -- what this Court does
13 is authorized or provided or guided by case law, statutory
14 authority, or Rules of Court. As I mentioned earlier, I
15 considered all of the information that has been provided and
16 I've also considered the comments made here this morning by
17 the parties. The punishment that must be imposed for the
18 crimes that Mr. Chandler was convicted of by the jury are
19 terms that are prescribed by law. The primary issue is
20 whether the terms should be concurrent or consecutive. The
21 probation report and the sentencing memorandums filed by the
22 parties address the various factors the Court should consider
23 and not consider and why.

24 In this particular case, the Court has discretion
25 to impose the concurrent or consecutive terms. The factors
26 mentioned by counsel and probation regarding whether
27 concurrent or consecutive sentences should be imposed are as
28 follows:

1 The aggravating factors noted relate to Rule of
2 Court 4.421(a)(3), (a)(8), and (a)(11).

3 The factors in mitigation noted relate to Rule of
4 Court 4.423(b)(1), (b)(6), and Rule of Court 4.408(a).

5 Rule of Court 4.425 list criteria affecting the
6 decision to impose consecutive rather than concurrent
7 sentences.

8 Regarding circumstances in aggravation, I agree
9 with the People -- excuse me. Rule of Court, as I mentioned,
10 4.425 lists criteria affecting the decision to impose
11 consecutive rather than concurrent sentences.

12 4.425(a)(1)(2) and (3) list the criteria relating
13 to the crimes.

14 4.425(b) states that any circumstances in
15 aggravation or mitigation may be considered in deciding
16 whether to impose consecutive rather than concurrent
17 sentences.

18 In deciding whether to impose consecutive sentences
19 rather than concurrent sentences, I found that Rule of Court
20 4.425(a)(1), the crimes and their objectives were
21 predominantly independent of each other applies here; and
22 (a)(3), the crimes were committed at different times rather
23 than being committed so closely in time and place as to
24 indicate a single period aberrant behavior applies.

25 I did not consider 4.425(a)(2), the crimes involve
26 separate acts of violence or threats of violence.

27 I have considered all factors in mitigation
28 suggested by the defense; specifically, per Rule of Court

1 4.423(b)(1), Mr. Chandler has an insignificant record of
2 criminal conduct;

3 (b)(6), defendant's prior performance on probation
4 was satisfactory. And the factors presented by the defense
5 pursuant to Rule 4.408(a) that Mr. Chandler has been a
6 productive member of society.

7 Defendant's family, including his three young
8 children, will suffer severely if the minimal sentence is
9 imposed, and will suffer much more greatly if any additional
10 sentence is imposed.

11 And third, defendant's risk assessment score on the
12 Static-99R reveal a total score of one.

13 Regarding the circumstances in aggravation, I agree
14 with the People, that Rule 4.421(a)(8), the manner in which
15 the crime was carried out indicates planning, sophistication,
16 and professionalism.

17 I presided over the trial, and the record speaks
18 for itself. However, in my opinion, the crimes committed by
19 Mr. Chandler clearly demonstrated planning and
20 sophistication.

21 Based on the defense objection, I did not consider
22 (a)(3), the victim was particularly vulnerable. Although I
23 believe the facts and circumstances could support that this
24 aggravating factor applies, I nevertheless did not consider
25 this factor.

26 I also considered (a)(11), the defendant took
27 advantage of a position of trust to commit the crimes.

28 Mr. Chandler violated one of our most valued

1 relationships in our society, the student/teacher
2 relationship. He took advantage of a position of trust. We
3 send our children to school and we believe the school is a
4 safe place. Once the child arrives at the school and enters
5 their classroom, they are in a safer place. And once their
6 teacher is present, the classroom becomes safer. There are
7 few places where a child should feel safer other than perhaps
8 their home.

9 Mr. Chandler used his position of authority to
10 sexually abuse each child in a closed classroom. As their
11 second and third grade teacher, the children trusted Mr.
12 Chandler. Each child victim in this case, because of the
13 defendant's position of authority and trust, and the trust
14 that they had for their teachers, obeyed and followed his
15 directions and allowed him to commit various sexual acts on
16 them while blindfolded.

17 As counsel knows, balancing the mitigating and
18 aggravating factors is not a mathematical process. One
19 factor of greater significance may outweigh a number of other
20 factors having lesser weight.

21 Having weighed the factors supporting consecutive
22 sentences with factors supporting concurrent sentences, I
23 find that the factors favor in consecutive sentences outweigh
24 the factors favor in concurrent sentences. I also find the
25 factors in aggravation outweigh the factors in mitigation.
26 And, specifically, I find that the defendant, having violated
27 a position of trust, standing alone, outweighs all of the
28 factors in mitigation presented and considered.

1 Therefore, at this time probation, will be denied.
2 Mr. Chandler is ineligible for probation pursuant
3 to Penal Code §1203.066(a)(7).

4 As to Count 1, the Court will impose a term
5 prescribed by law of 15 years to life.

6 As to Count 2, the Court will impose a term of 15
7 years to life consecutive to Count 1.

8 As to Count 3, the Court will impose a term of 15
9 years to life consecutive to Count 2.

10 Count 4, the Court will impose a term of 15 years
11 to life consecutive to Count 3.

12 Count 5, the Court will impose a term of 15 years
13 to life consecutive to Count 4 for a total term of 75 years
14 to life.

15 Defendant is advised of a parole period of ten
16 years pursuant to Section 3000(b)(2) of the Penal Code.

17 Court will order a general order of restitution to
18 any victim for any injuries or damages caused by his conduct.

19 Court will specifically order restitution in the
20 amount of \$14,197.50 to the Victim Compensation and
21 Government Claims Board.

22 The director of the California Department of
23 Corrections and Rehabilitation is directed to collect this
24 restitution from the defendant's earnings in prison or while
25 on parole or post-release community supervision.

26 The defendant shall not own, knowingly possess, or
27 have within his custody or control any firearm or ammunition
28 for the rest of his life pursuant to Section 29800 and 30305

1 of the Penal Code.

2 Defendant is ordered to register pursuant to
3 Section 290 of the Penal Code, and comply with Section 290.85
4 of the Penal Code.

5 Number 9, the Court is not going to impose the \$300
6 fine pursuant to 290.3.

7 The defendant shall submit to a blood test for
8 evidence of antibodies to the probable causative agent of
9 acquired immune deficiency syndrome, AIDS, pursuant to
10 Section 1202.1 of the Penal Code.

11 Court issues an order prohibiting visitation to the
12 defendant and any child victim pursuant to 1202.05 of the
13 Penal Code.

14 Restitution fund fine of \$10,000 is imposed
15 pursuant to Section 1202.4.

16 Additional restitution fine of an amount equal to
17 that imposed under Section 1202.4 is imposed and suspended
18 per Section 1202.45 of the Penal Code.

19 Defendant is ordered to supply buccal swab samples,
20 prints, blood specimens, and/or other biological samples
21 pursuant to Penal Code 296.

22 Court security fee of \$200 is imposed pursuant to
23 section 1465.8 of the Penal Code.

24 A criminal conviction assessment of \$150 is imposed
25 pursuant to Section 70373 of the Government Code.

26 \$129.75 criminal justice administrative fee to the
27 City of San Jose is imposed per Government Code 29550, 550.1
28 and 550.2.

1 Credits as to Count 1 are 683 actual days, plus 102
2 days 2933.1 credits, for a total of 785 days.

3 Mr. Chandler is advised that he must file notice of
4 appeal within 60 days of today's date.

5 That concludes this matter.

6 MR. MADDEN: Your Honor, I have one statement, if I
7 could?

8 THE COURT: Yes.

9 MR. MADDEN: Before the Court leaves the bench, I
10 know I would like to approach the bench on a brief matter
11 with Ms. Filo when I'm done with that.

12 THE COURT: Okay.

13 MR. MADDEN: I would like the record to reflect
14 that I object to the sentences running consecutively. I
15 object to the factors the Court is relying on to justify the
16 consecutive sentences. Although we covered most of this in
17 our memoranda, I want to state for the record the factors the
18 Court is relying on imposing consecutive sentences are
19 factually unsupported and legally inapplicable.

20 I would ask to approach the bench briefly.

21 THE COURT: Yes, your objection is noted.

22 MR. MADDEN: Thank you.

23 (Whereupon, a brief recess was taken.)

24 THE COURT: Thank you, Counsel. We'll be in
25 recess.

26 MS. FILO: Thank you, Your Honor.

27 (Whereupon, the Court recessed.)

28

1 STATE OF CALIFORNIA)
2 COUNTY OF SANTA CLARA)
3

4 I, JAMIE L. MIXCO, HEREBY CERTIFY THAT:

5 The foregoing is a full, true, and correct
6 transcript of the testimony given and proceedings had in the
7 above-entitled action taken on the above-entitled date; that
8 it is a full, true, and correct transcript of the evidence
9 offered and received, acts and statements of the Court, also
10 all objections of counsel, and all matters to which the same
11 relate; that I reported the same in stenotype to the best of
12 my ability, being the duly appointed and official
13 stenographic reporter of said Court, and thereafter had the
14 same transcribed into typewriting as herein appears.

15 I further certify that I have complied with CCP
16 237(a)(2) in that all personal juror identifying information
17 has been redacted if applicable.

18
19 Dated:
20
21

22 _____
23 Jamie L. Mixco, C.S.R.
Certificate No. 12708

24 ATTENTION:
25 CALIFORNIA GOVERNMENT CODE
SECTION 69954(D) STATES:

26 "ANY COURT, PARTY, OR PERSON WHO HAS PURCHASED A TRANSCRIPT
27 MAY, WITHOUT PAYING A FURTHER FEE TO THE REPORTER, REPRODUCE
28 A COPY OR PORTION THEREOF AS AN EXHIBIT PURSUANT TO COURT
ORDER OR RULE, OR FOR INTERNAL USE, BUT SHALL NOT OTHERWISE
PROVIDE OR SELL A COPY OR COPIES TO ANY OTHER PARTY OR
PERSON."